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In the

Supreme Court of the United States

OCTOBER TERM 1963

1419

No. [redacted]

IN THE MATTER OF THE ADOPTION OF
MOLLY PAGE ARMSTRONG, A MINOR

R. WRIGHT ARMSTRONG JR.,
Petitioner,

v.

SALVATORE E. MANZO et ux,
Respondent.

Petition for Writ of Certiorari to the Court of Civil Appeals for the Eighth Supreme Judicial District of Texas

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IN THE MATTER OF THE ADOPTION OF MOLLY PAGE ARMSTRONG, A MINOR

R. WRIGHT ARMSTRONG JR.,

Petitioner,

v.

SALVATORE E. MANZO et ux,

Respondent.

Petition for Writ of Certiorari to the Court of Civil Appeals for the Eighth Supreme Judicial District of Texas

R. Wright Armstrong, Jr. respectfully prays that a writ of certiorari issue to review the judgment of the Court of Civil Appeals for the Eighth Supreme Judicial District of Texas, entered in this cause on September 11, 1963.

OPINION BELOW

The opinion rendered by the Court of Civil Appeals for the Eighth Supreme Judicial District of Texas on Septem-

ber 11, 1963, affirming the judgment of the trial court granting the adoption of Molly Page Armstrong, a Minor, by Salvatore E. Manzo et ux, Respondent, is reported at 371 S.W. 2d 407. (Appendix 1-A)

On January 15, 1964, the Supreme Court of Texas refused the application of Petitioner for writ of error without opinion, 7 Tex. Sup. Ct. J. 74 (Appendix "B"), and on March 4, 1964, Petitioner's motion for rehearing of the application for writ of error was overruled, 7 Tex. Sup. Ct. J. 256 (Appendix 1-B).

JURISDICTION

The judgment of the Court of Civil Appeals for the Eighth Supreme Judicial District of Texas was entered on September 11, 1963. (Appendix 1-A).

The Supreme Court of Texas refused timely application for writ of error on January 15, 1964, and overruled Petitioner's motion for rehearing on March 4, 1964, making final the decision of the Court of Civil Appeals. (Appendix 1-B).

The jurisdition of this Court is invoked under 28 U.S.C., section 1257 (3), in that the Texas courts in upholding the validity of the Texas statute, article 46a, section 6, Vernon's Annotated Texas Civil Statutes, have held that there is no constitutional requirement of notice if the consent of a natural parent is not required to an adoption, and under the same section because Petitioner was deprived of certain rights without due process of law, contrary to the Constitution of the United States.

QUESTIONS PRESENTED

1. Whether due process of law requires that notice of adoption proceedings be given the natural father of the child to be adopted, when the father's residence is within the state and known to the adopting parents, and he is amenable to service of process?

2. Whether a state statute, as construed by the state courts, which does not require that notice of adoption proceedings be given a natural parent in instances of non-support for two years, is repugnant to due proces of law?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The constitutional provision involved is the due process clause of the Fourteenth Amendment.

The state statute involved is article 46a, sections 6-7, Vernon's Annotated Texas Civil Statutes. (Appendix 1-M)

STATEMENT OF THE CASE

Petitioner R. Wright Armstrong Jr. and Alice Davis Manzo (wife of Respondent Salvatore E. Manzo) were divorced by decree of the 96th District Court of Tarrant County, Texas, on November 6, 1959. (Appendix 1-N). Custody of the minor child of the parties, Molly Page Armstrong, was awarded to the mother, with visiting privileges granted to the father. The divorce decree provided, *inter alia*, that Petitioner was to pay child support "of $50.00 per month, beginning November 16, 1959, and continuing there-

after on the 16th day of each succeeding month until further order of this court * * *" (Appendix 1-N).

On March 11, 1960, Respondents, Alice Flournoy Davis Armstrong and Salvatore E. Manzo were married in El Paso County, Texas. Thereafter, on March 12, 1962, Respondents filed their petition for leave to adopt Molly Page Armstrong (then five years of age) in the 120th District Court of El Paso County, Texas. On April 27, 1962, the trial court granted the adoption. The judgment recited:

> "Written consent of the natural father, R. W. Armstrong, Jr., to the adoption herein sought is not necessary upon grounds that the said father has not contributed to the support of said minor child commensurate with his ability for a period in excess of two (2) years,* and the Judge of a Juvenile Court of El Paso County, Texas, to wit: Judge David E. Mulcahy, Judge of the 41st District Court, has consented in writing to said Petition for Adoption under provisions of Section 6, Article 46a, Texas Civil Statutes." (TR. 10-11, Appendix 1-D).

After the adoption had been granted, Petitioner learned of the adoption by letter from Respondent Manzo; a motion for a new trial was timely filed in the court which rendered the judgment of adoption. (Tr. 13-14). The motion for new trial, as amended, was heard by the trial court, without a jury. Petitioner presented evidence showing that he was physically and mentally ill and incapable of making the support payments, that the child had visited with Petition-

* Under Texas law, a natural parent's consent to adoption is not required if he has not supported the child for two years next preceding the petition for adoption. Tex. Rev. Civ. Stat. Ann. art. 46a (6) (1959). This petition for adoption was filed two years and one day after the date of Respondents' marriage, but four days before the anniversary date of Petitioner's last child support payment.

er since the divorce, and that Petitioner and Respondents corresponded regularly. The trial court nevertheless overruled Petitioner's motion and confirmed the adoption judgment, filing findings of fact. (Tr. 20, Appendix 1-E). Petitioner appealed to the Court of Civil Appeals for the Eighth Supreme Judicial District of Texas at El Paso.

While the appeal was pending, Alice Davis Manzo made demand and filed a motion in the 96th District Court of Tarrant County, Texas (the court which rendered the divorce), to compel payment of child support, and requesting a deposit of $1,550.00 for arrears be made into court, on pain of contempt. Petitioner tendered this amount in full, along with a bill of interpleader requesting that the funds be held until proper evidence was presented to the court. On July 8, 1963, hearing was had and the court entered an order refusing to hold Petitioner in contempt of that court for having failed to make child support payments, and specifically finding that Petitioner had contributed to the support of the child commensurate with his ability since the divorce, and that he had paid all amounts in arrears then owing. (Appendix 4-G).

Aso soon as the contempt proceeding was instituted in Tarrant County, Petitioner moved to abate the adoption in the El Paso Court of Civil Appeals; upon rendition of the order of the district court in Tarrant County, Petitioner filed a supplemental motion to abate the adoption proceedings (Appendix 1-G) on the ground that the period of non-support covered in the contempt proceedings was the same period urged as statutory grounds for dispensing with the

necessity for his consent in the adoption proceeding. This motion was overruled by the court of civil appeals. (Appendix 2-C).

The court of civil appeals affirmed the judgment granting the adoption on September 11, 1963, and on October 16, 1963 overruled Petitioner's motion for rehearing. (Appendix 3-C). On January 15, 1964, the Supreme Court of Texas refused Petitioner's application for writ of error (Appendix 1-B) and on March 4, 1964 overruled Petitioner's motion for rehearing of the application for writ of error. (Appendix 1-B). Petitioner seeks the issuance of a writ of certiorari to review the judgment of the Court of Civil Appeals for the Eighth Supreme Judicial District of Texas.

PRESENTATION OF FEDERAL QUESTION

Excerpts from the record, printed in Appendix 1-L, show the following steps taken by Petitioner to preserve the federal question:

In Petitioner's Motion for New Trial filed in the trial court, Petitioner alleged that he did not give his consent for the adoption and that he did not have notice, actual or constructive, of the filing of the suit in that court or of the judgment until after the rendition of the judgment. (Tr. 13, Appendix 1-L). In his Amended Motion for New Trial and Motion to Vacate Judgment, Petitioner further alleged that although Respondents knew his address and whereabouts, they did not notify him, and wrongfully and intentionally withheld all notice from him for the expressed purpose of

denying him the opportunity to appear. (Tr. 15, Appendix 2-L).

Petitioner properly presented the question to the Court of Civil Appeals for the Eighth Supreme Judicial District of Texas at El Paso, assigning as error the failure of the trial court to set aside the judgment of adoption because article 46a, section 6, on which jurisdiction rested, was unconstitutional in that it permitted the adoption without notice to or consent of Petitioner and thereby deprived Petitioner of his child without due process of law. (Appellant's Point No. 3, Appellant's Brief, Appendix 3-L). Petitioner further asserted that the trial court erred in not setting aside the adoption because the undisputed evidence showed the adoption judgment was obtained without notice to Petitioner. (Appellant's Point No. 4, Appellant's Brief, Appendix 3-L).

Petitioner preserved these points in his Motion for Rehearing filed in the Court of Civil Appeals (Appendix 3-L) and in his Application for Writ of Error to the Texas Supreme Court. (Appendix 4-L). In his Motion for Rehearing filed in in the Texas Supreme Court, Petitioner further contended that the trial court applied Article 46a and conducted the proceedings in an unconstitutional manner (Appendix 4-L).

REASONS FOR GRANTING THE WRIT

A. Importance of the Questions

Aside from the obvious importance of these questions to Petitioner, who was deprived of his child without notice, the solution of the problem involved in this case will have

far-reaching effect on a growing practice. The Department of Health, Education and Welfare has collected statistics showing that there were 100,004 adoptions in forty-five reporting states; Texas ranked second in the number of adoptions with 8,432. U.S. Bureau of the Census: *Statistical Abstract of the United States* - 1963, 310 (84th Ed. 1963). There were an estimated 14,000 additonal adoptions in non-reporting states. *Ibid.* All states, except for Florida and Connecticut, make provision in their adoption statutes for dispensing with the consent of the natural parents in certain instances. Comment, *A Compilation of Consent Provisions of Adoption Statutes*, 24 Rocky Mt. L. Rev. 359 (1952). If this Court should hold that consent, or absent consent, service of process, is not required by due process, it does not take a fertile imagination to see the possibilities which will make it possible to deprive a parent of his child without the parent's knowledge.

Compounding the problem is the full faith and credit clause of the Constitution, as construed by this Court. U.S. Const., art. IV, section 1; 28 U.S.C. § 1738; *Estin v. Estin*, 334 U.S. 541. Migratory divisible divorces, with their myriad problems, are considerably less serious than the questions of full faith and credit in adoption cases, where the welfare and interests of a child are involved, and property rights are changed. *In re Hampton's Estate*, 55 Cal. App. 2d 543, 131 P.2d 565 (1942). Statutes, and cases construing statutes furnishing bases for jurisdiction run the gamut from temporary residence of the adopting parent combined with residence of the child to permanent residence of the adopting

parents. Compare *Heirch v. Howe*, 171 P.2d 312 (Sup. Ct. N.M. 1946), with *Wolf's Appeal*, 10 Sad. (Pa.) 139, 13 Atl. 760 (1888); 4 Vernier, American Family Laws 293-94 (1936); Note, 59 Yale L.J. 713 (1950).

With the additional problems raised in this area by *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, and *May v. Anderson*, 345 U.S. 528, and the probable applications of those cases to adoption proceedings, see Fraser, *Jurisdiction by Necessity - An Analysis of the Mullane Case*, 100 U. Pa. L. Rev. 305, 317-19 (1951), and Hazard, *May v. Anderson: Preamble to Family Law Chaos*, 45 Va. L. Rev. 379, 395-400 (1959), a question is presented which requires the attention of this Court.

B. Petitioner Was Deprived of Due Process of Law by the Failure of the Trial Court to Give Notice of the Pending Adoption of His Child.

Petitioner's case rests squarely upon the decisions of this Court in *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306, and *May v. Anderson*, 345 U.S. 528. In those cases, this Court enunciated two rules which are applicable. In *Mullane*, Justice Jackson reminded us of the rule of due process that for judicial finality, notice must be given which is "reasonably calculated under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." 339 U.S. at 314. In *May v. Anderson*, this Court held that to cut off parental rights a state court must have jurisdiction *in personam* of the spouse whose rights the court seeks to sever.

Article 46a, Tex. Rev. Civ. Stat. Ann. (1959), makes no provision for service of process upon the natural parents of a child to be adopted. (Appendix 1-M). The Texas courts have rationalized this deficiency by saying that the availability of a hearing at a later date is sufficient for due process. *Trotter v. Pollan*, 311 S.W. 2d 723 (Tex. Civ. App. 1958), err. ref. n.r.e., 158 Tex. 516, 313 S.W. 2d 603 (1958); *Lee v. Purvin*, 285 S.W. 2d 405 (Tex Civ. App. 1955) err. ref. n.r.e.; *Pearce v. Harris*, 134 S.W. 2d 859 (Tex. Civ. App. 1939); see argument under "C", infra pp. 14-15. The courts in Texas have not, however, defined the nature of the subsequent hearing which should be made available. In the opinion of the Court of Civil Appeals below, it was indicated that the hearing on the motion for new trial met the Texas requirement. 371 S.W. 2d at 412. If the hearing given Petitioner in this case meets the requirement of due process, that doctrine affords little protection. Petitioner, after being informed by the adoptive father by letter that a decree of adoption of his child had been rendered (serving all his parental rights), was forced to prepare and present a complicated case in slightly over thirty days. Due process envisions not only notice of suit, but also the fair opportunity to present contentions. *Roller v. Holly*, 176 U.S. 398. "The criterion is not the possibility of conceivable injury, but the just and reasonable character of the requirements, having reference to the subject with which the statute deals." *American Land Co. v. Zeiss*, 219 U.S. 47, 67, quoted with approval in *Mullane*, 339 U.S. at 315.

The Texas statute, as construed below, permits Respondents to have their cake and eat it too. *First*, Petitioner is told

that he is not entitled to notice so long as a subsequent hearing is available to him. (This, despite the fact that the subsequent hearing would necessarily be either a bill of review or a habeas corpus proceeding, in both of which the burden would be upon Petitioner to prove facts justifying the setting aside of the final judgment of adoption previously rendered. See *Trotter v. Pollan, supra, and Lee v. Purvin, supra.) Second*, after being denied the opportunity to participate in the original hearing, Petitioner is permitted to enter the case on short notice after all proceedings have been had and a judgment rendered, with the burden of convincing the trial judge of the error of the rendered judgment.

The rights involved in adoption are important indeed. The incidents of the parent-child relationship include reciprocal rights and duties of utmost importance to society. The "precious" parental right pointed out in *May v. Anderson* is an obvious incident. 345 U.S. at 533. But this is only a portion of the relationship. The rights of care, custody, inheritance and support are also present. Tex. Rev. Civ. Stat. Ann. art. 46a, § 9 (1959), *infra pp. 15-16*. To deprive a parent of these rights is harsh and should only be done in extreme cases. Most of the states have requirements in their adoption statutes of personal service of citation in adoption proceedings. See, e.g., Cal. Civ. Code § 224; Ga. Code Ann. §§ 74-403,-406. In three leading cases it has been held by state courts to be a denial of due process to deprive a parent of his child without personal notice. *Fielding v. Highsmith*, 152 Fla. 837, 13 So. 2d 208 (1943); *Child Sav. Inst. v. Knobel*, 327 Mo. 609, 37 S.W. 2d 920 (1931); *Nelson v. Ecklund*,

68 N.D. 724, 283 N.W. 273 (1938); Annot., *Necessity of Notice to Parent or Legal Custodian Before Adoption of Child*, 24 A.L.R. 419 (1923) supp'd 76 A.L.R. 1077 (1932). See also *Carpentet v. Forshee*, 103 Ga. App. 758, 120 S.E. 2d 786 (1963), for a discussion of the principal cases.

What rationale can justify dispensing with notice? A Texas Court, speaking of the failure of the statute to provide for notice, stated:

> "Notice of citation to natural parents of a child in a proceeding to adopt a child is not necessary nor provided for by statute, since, if parents shall retain parental rights in a child, it is essential that they consent to the adoption, which is sufficient notice of the proceeding." *Matthews v. Whittle*, 149 S.W. 2d 601, 602 (Tex. Civ. App. 1941).

This is typical reasoning in the area of consent to adoption: no consent is required, hence no notice is required, since a filed consent replaces notice. Comment, *Adoption and the Problem of Consent*, So. Tex. L.J. 186, 190-91 (1960). Professor Fraser, in his article on the effect of *Mullane* in adoptions, criticizes one such holding [*In re Hardesty's Adoption*, 150 Kan. 271, 92 P.2d 249 (1939)] for its confusion of two problems. "By misconduct the parent may lose the right to object to the adoption of his child, but he is still entitled to notice prior to the complete severance of the parent-child relationship." Fraser, *Jurisdiction by Necessity - An Analysis of the Mullane Case*, 100 U. Pa.L. Rev. 305, 318 (1951).

And if the *Mullane* case, with its stringent requirements of notice, is said not to apply here, what of *May v. Ander-*

son? There this Court held that an Ohio court need not give full faith and credit to a Wisconsin custody decree handed down without personal jurisdiction over the mother. "[I]f a parent cannot be deprived of the 'precious' right of custody without such [personal, in-state] service, *a fortiori* he cannot be deprived of all legal relationship to the child without being personally served." Hazard, *May v. Anderson: Preamble to Family Law Chaos*, 45 Va. L. Rev. 379, 398 (1959). Even limiting *May* to custody decrees (its narrowest interpretation), the case would apply to Petitioner's dilemma because an adoption decree includes within its operation a change of custody, terminating Petitioner's rights of visitation with his child, awarded by the divorce decree.

Justice Burton recognized that a parent's right to custody is entitled to at least as much protection as his economic interest in alimony, citing *Estin v. Estin, supra*, and *Kreiger v. Kreiger*, 334 U.S. 555. If a parent's rights in and to a child are as valuable as economic rights, this Court should grant this Petition. Before depriving a person of legally protected rights, by judicial proceeding, notice must be given calculated to informing the person of the proceeding. See *Walker v. City of Hutchinson*, 352 U.S. 112. There can be no constitutional justification for doing less.

C. The Texas Adoption Statute is Unconstitutional in Failing to Provide for Service of Notice on Natural Parents of Children to be Adopted.

Article 46a(6), Tex. Rev. Civ. Stat. Ann. (1959) (Appendix 1-M, makes no provision for service of process on a

natural parent in an adoption proceeding, whether or not his consent to the adoption is required. *In re Adoption of Armstrong*, 371 S.W. 2d 407 (Tex. Civ. App. 1963) error ref. n.r.e.; *Trotter v. Pollan*, 311 S.W. 2d 723 (Tex. Civ. App. 1958); *Lee v. Purvin*, 285 S.W. 2d 405 (Tex. Civ. App. 1957) error ref n.r.e.; *Matthews v. Whittle*, 149 S.W. 2d 601 (Tex. Civ. App. 1941); Comment, *Adoption and the Problem of Consent*, 5 So. Tex. L.J. 186, 190-92 (1960). There is no dispute on this phase of Texas law, the exclusion of a requirement of notice resting on the theory that affording a later hearing justifies dispensing with this requirement, satisfying due process. *Trotter v. Pollan, supra*; *Lee v. Purvin, supra.*

But what sort of later hearing is given? The natural parent may rely upon section 7 of article 46a, which provides that a court of competent jurisdiction may award the custody to the natural parents "upon proof of the bad moral character of such adoptive parent, or upon proof of abuse, neglect or ill treatment of such adoptive child by the adoptive parent." (Appendix 1-M). Or the parent who has not been notified may throw himself upon the tender mercies of the court in which the adoption took place in a bill of review proceeding, *proving* that the original adoption was an abuse of discretion by the judge. *Lee v. Purvin, supra.* Or he may bring a habeas corpus proceeding, *proving* that he had not so deserted or failed to support the child as to render void the adoption. *Trotter v. Pollan, supra.*

Such proceedings are illusory answers to due process requirements, imposing on the natural parent a burden of proof requiring that he negate grounds which should properly have been proved by the adoptive parents in the adoption proceeding. Further, the best interests of the child are still of paramount importance, and these interests undoubtedly change after the child has remained with the adoptive parents for the period of time required for the subsequent hearing to be presented. *cf. Trotter v. Pollan, supra.*

No notice required? Texas says not, even though article 46a (9) provides:

> Sec. 9. When a minor child is adopted in accordance with the provisions of this Article, all legal relationship and all rights and duties between such child and its natural parents shall cease and determine, and such child shall thereafter be deemed and held to be for every purpose the child of its parent or parents by adoption as fully as though naturally born to them in lawful wedlock. Said child shall be entitled to proper education, support, maintenance, nurture and care from said parent or parents by adoption, and said parent or parents by adoption shall be entitled to the services, wages, control, custody and company of said adopted child, all as if said child were their own natural child. For purposes of inheritance under the laws of descent and distribution such adopted child shall be regarded as the child of the parent or parents by adoption, such adopted child and its descendents inheriting from and through the parent or parents by adoption and their kin the same as if such child were the natural legitimate child of such parent or parents by adoption, and such parent or parents by adoption and their kin inheriting from and through such adopted child the same as if such

> child were the natural legitimate child of such parent or parents by adoption. The natural parent or parents of such child and their kin shall not inherit from or through said child, but said child shall inherit from and through its natural parent or parents. Nothing herein shall prevent any one from disposing of his property by will according to law. Such adopted child shall be regarded as a child of the parent or parents by adoption for all other purposes as well, except that where a deed, will, or other instrument uses words clearly intended to exclude children by adoption, such adopted child shall not be included in such class.

No other answer can be given than that a statute divesting a parent of the rights enumerated in that provision is unconstitutional if it makes no provision for notice. *Walker v. City of Hutchinson*, 352 U.S. 112; *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 528; *Milliken v. Meyer*, 311 U.S. 457; *Grannis v. Ordean*, 234 U.S. 385.

D. The Specific Question has not been Presented to this Court Before.

Petitioner has been unable to discover a previous case in this Court dealing with the questions brought before the Court by this Petition. Closest in point is *May v. Anderson*, 345 U.S. 528, discussed previously, which held that due process requires a court to have personal jurisdiction over a parent whose rights to the custody of a minor child are involved.

CONCLUSION

For the foregoing reasons it is respectfully requested that this petition for writ of certiorari be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on the 2nd day of June, A.D., 1964, a true and correct copy of the foregoing Petition for Writ of Certiorari to the Court of Civil Appeals for the Eighth Supreme Judicial Dictrict of Texas was served upon counsel for Respondents, Mr. William Duncan, First National Building, El Paso, Texas, and Mr. W. O. Craft, 110 N. Stanton Street, El Paso, Texas, by depositing copies thereof in the United States mail, Certified Return Receipt Requested, addressed to each of them at their foregoing last known addresses.

Ewell Lee Smith Jr.

EWELL LEE SMITH, JR.

APPENDIX A

From the Clerk's Office,
Court of Civil Appeals, El Paso
IN RE:
ADOPTION OF
MOLLY PAGE ARMSTRONG, a Minor.
No. 5618
Appeal from the District Court of
El Paso County.

OPINION

This is an appeal from an order of the 120th District Court of El Paso County, Texas, overruling a motion for new trial and affirming the decree of the court which granted a petition for adoption of the minor child, Molly Page Armstrong, then between four and five years old, by the petitioner, Salvatore E. Manzo, in which petition his wife, Alice Flournoy Davis Manzo, the natural mother of the minor, joined. The motion for new trial was filed by appellant R. Wright Armstrong, the natural father of the child. Appellant and appellee, Alice Davis Manzo (formerly Alice Flournoy Davis Armstrong) were divorced by decree of the 96th District Court of Tarrant County, Texas on November 6, 1959. Custody of the minor child of the parties was awarded to the mother, with visiting privileges granted to the father. The divorce decree contained the provision that the community and separate property of the parties be distributed by agreement of the parties, and the further provision that the father was to pay

into the Child Support office of Tarrant County "$50.00 per month, beginning November 16th., 1959, and continuing thereafter on the 16th. day of each succeeding month until further order of this court, or until said child shall reach 18 years of age." Appellant made one payment of $50.00 into the Child Support office in November of 1959 and in February of 1960 he made a payment of $150.00 into the office. While it may perhaps be said that there is some ambiguity in the trial court's support order as to the application of the $50.00 monthly payments when made, it is our opinion that the payment in November, 1959, was for the month of November, and the $150.00 payment in February, 1960, was for the months of December, 1959, January, 1960, and February, 1960. There were no further payments into the Child Support office. The appellant here contends that these two payments covered the period from November 16, 1959 to March 16, 1960. The verified petition for adoption was filed on March 12, 1962 and alleged that:

> "7. Written consent of the natural father R. W. ARMSTRONG, JR., to the adoption herein sought is not necessary upon grounds that the said father has not contributed to the support of said minor child commensurate with his ability to do so for a period in excess of two (2) years, and the Judge of a Juvenile Court of El Paso County, Texas, to-wit: Judge Mulcahy, Judge of the 41st Court, has consented in writing to said adoption under provisions of Section 6, Article 46A, Texas Civil Statutes."

Appellant's first point cites error of the court in not rendering judgment for appellant setting aside the adoption because there is no evidence that appellant failed to contrib-

ute substantially to the support of the child for a two-year period prior to the filing of the petition for adoption, commensurate with his financial ability, or that such finding was against the great weight and preponderance of the evidence. Appellant states the child supp having been paid until March 16, 1960, that for at least four days of the alleged two-year period the appellant had contributed support to his daughter. However, our interpretation of the court's support order, as indicated above, is that support payments into the Child Support office covered a period of time through the month of February, 1960, only, and that the adoption petition was filed twelve days thereafter.

But appellant asserts that he had made other payments and contributions in addition to those made to the Child Support office, which should be considered child support payments. After the divorce, the minor child on occasions visited her father and grandparents, with whom her father resided, in Fort Worth. Appellant states that on one of these occasional visits, in the summer of 1961, he "bought her some clothes" and "bought her lots of toys" and took her to a production of the Wizard of Oz, the total of these expenditures running "in the neighborhood of $75.00." The following Christmas, on another visit, he "took her to a clothing store and purchased three dresses and a purse for her for Christmas" at a cost of $50.00.

In February of 1960, after the divorce from appellant was granted appellee Alice Davis Manzo in November, 1959,

their house was sold for an amount slightly in excess of a thousand dollars. Appellant contends that it was his understanding that the proceeds from this sale were to be divided between the parties on a fifty-fifty basis but that he directed that the majority of the money be sent to his ex-wife "for the benefit of the child". He testified that Mrs. Manzo received somewhere in the neighborhood of $875.00 and that he received something like $150.00 or $160.00. However, there was introduced in evidence a property settlement agreement executed by the parties before the divorce and reaffirmed and ratified by the parties after the divorce which contains the following paragraph:

> "During their marriage, the parties occupied as their home the residence located at 6853 Middle Road, Fort Worth, Texas. Two Thousand Five Hundred Dollars ($2,500.00) of the down payment for such property was paid out of the separate funds of Flournoy D. Armstrong. In the event that a divorce be granted in the above mentioned suit, such property shall be sold within a reasonable time for the best available offer, taking into consideration the condition of the real estate market, and the net proceeds, if any, therefrom shall be pro rated between the parties proportionate to the separate interest of Flournoy D. Armstrong therein and the community interest of the parties therein. The parties hereto shall execute any instrument necessary or desirable to consumate such sale."

This provision certainly seems to be at variance with, and refutes, appellant's claimed understanding as to the equal division of the proceeds of the sale of the home, and that any part of his share of these proceeds was to be considered a contribution by him to child support.

During the period of time after the divorce and up until the date of filing of the adoption petition the appellant had been, on various occasions, ill, unable to work and in the hospital. However, according to our calculations from the evidence presented, appellant had earned during this period an amount in excess of $4,200.00, at least $3,500.00 of which was earned in the two-year period prior to the filing of the adoption petition. For the entire period since the divorce he had paid only $200.00 into the Child Support office. Appellant was a duly licensed and practicing attorney living in Fort Worth, Tarrant County, Texas where the divorce decree with child support order was entered, but he at no time made any effort to have the support order modified or to obtain credit from the Child Support office for the contributions and expenditures he claims to have made for the benefit of his minor child in addition to the two payments made directly into the office. Aside from what income he received in his law practice, he had been employed at various times as Assistant City Attorney, substitue judge of the Corporation Court and finally filled a vacancy as full-time Corporation Court judge in Fort Worth. He was living with his parents who were not only furnishing him food and shelter but paying many incidentals such as carfare, haircuts and laundry. He was either employed in public office without expense, or working in a law office without expense. At the time of the filing of the adoption petition he was employed as Corporation Court judge at a salary of $239.44 every two

weeks and had been so employed for about a month. He had bought a Pontiac automobile. He testified that he had paid off community debts, but even in this his family helped him. We feel that, from the record, the conclusion is inescapable that the appellant failed to contribute substantially to the support of his child for a two-year period prior to the filing of the petition for adoption commensurate with his financial ability, and the trial court so found in his Conclusions of Law. Appellant's first point of error is accordingly overruled.

However, appellant urges in his second point of error that the provisions of Section 6 of Article 46a, T.R.C.S., had not received full compliance. This is the statutory provision that permits an adoption without the written consent of a living parent of the child sought to be adopted when such parent shall not have contributed substantially to the support of such child during a period of two years *commensurate with his financial ability*, upon written consent to the adoption by the juvenile court of the county of such child's residence. Appellant points out that neither the affidavit accompanying the adoption petition nor the consent of the juvenile judge herein contained the italicized language. The cases of Moorman v. Hunnicutt, 325 S.W. 2d 941 (Civ. App., 1959, ref. N.R.E.) and Stinson v. Rasco, 316 S.W. 2d 900 (Civ. App., 1958, no wr. hist.) are cited as authorities that the provisions of the statute must receive strict compliance. The latter case holds:

> "While adoption statutes are to be liberally construed in favor of minors in order to effectuate their beneficial purpose, Woodall v. Schmudlach, Tex. Civ. App., 299

> S.W. 2d 780, the rule of strict construction applies in favor of a non-consenting parent. Jones v. Willson, Tex. Civ. App., 285 S.W. 2d 877. Especially so 'in those cases where it is claimed that owing to misconduct his consent to the adoption is not required. Every intendment should be made in such case in favor of the parent's claim; and where the statute is open to construction and interpretation, it should be construed in support of the parent's natural rights.' 1 Am. Jur. pp. 626, 627."

We agree with the holding in these cases. But in the instant case the petition contained allegations strictly in conformance with the statute and this petition was verified by the affidavit of both petitioners for the adoption. We believe that in determining whether there has been compliance with the statute, the whole record should be examined, and such an examination in the instant case, in our opinion, reveals full compliance; and as has been shown, it is our further opinion that the allegations of the petition have been supported by testimony herein.

Under Point Two appellant further complains that there was no showing that the requirements of Sec. 1c of Art. 46a, T.R.C.S., had been met. This section reads as follows:

> "Sec. 1c. After the filing and docketing of the petition, *and in order to aid in completing the investigator's report required by law, there shall be furnished upon the request* of the Judge of the Court in which said application is pending, or the investigator appointed by the Court, or the Executive Director of the State Department of Public Welfare, the following information: (1) the name of the child as it appears on the birth certificate; (2) the names, residences, and/or street addresses of the natural parents; or if the names and addresses of the natural parents or the name of said child are unknown to the petitioner, such fact or facts should be

so stated to either the Judge, investigator, or the Executive Director of the State Department of Public Welfare *requesting such information*, in which event there shall be furnished in response to such request, the name and address of any person, agency or institution having such information." (Emphasis supplied).

The record herein reflects that a certified copy of the adoption petition was mailed by the Clerk of the Court to the Executive Director of the State Department of Public Welfare in Austin, Texas, in compliance with the provisions of Sec. 1b of said Art. 46a, T.R.C.S. The judge of the trial court made a Finding of Fact that he did not request, nor did the report of the investigator show that the investigator requested any of the information set forth in Section 1c, Art. 46a, supra. There is nothing in the record to indicate that the Executive Director made any such request. Had he done so, and appellees failed to furnish the information in response to such request, this certainly would be a factor to be shown by appellant in seeking to set aside the decree of adoption for want of jurisdiction of the trial court. We do not feel that it was incumbent upon appellees to negative the fact of such request, especially as the point was not raised in either appellant's first or amended motion for a new trial. For these considerations, the objections raised in appellant's Point No. 2 are overruled.

Appellant's third point urges the unconstitutionality of Article 46a, T.R.C.S., in that it permits an adoption without notice to or consent of a natural parent, thereby depriving such parent of his child without due process of law. Point Four maintains that the trial court erred in not render-

ing judgment for appellant setting aside the adoption because the undisputed evidence shows that the adoption judgment was obtained without any notice to appellant. That no notice was given appellant before the adoption is undisputed, but the necessity for such notice depends upon the answer to Point No. Three.

This matter was passed upon in the case of Lee v. Purvin, 285 S.W. 2d 405 (Civ. App., 1955, wr. ref., N.R.E.) and we have been unable to find any later expression on the subject. The language employed in the cited case is as follows:

> "The ninth point in appellant's brief is as follows: 'Art. 46a of Revised Civil Statutes of Texas, permitting an adoption of appellant's children without his consent and without notice to him of any nature of such adoption proceedings is an unconstitutional deprivation of petitioner's children without due process of law and void.' Although this court entertains serious doubt as to the correct solution of the problem presented by the foregoing point, we are constrained to overrule the contention of appellant thus presented on the authority of Dendy v. Wilson, 142 Tex. 460, 179 S.W. 2d 269, 151 A.L.R. 1217 and De Witt v. Brooks, 143 Tex. 122, 182 S.W. 2d 687. We believe, however, that where the living parents are without notice of adoption proceedings, and where they do not give written consent for such adoption, they must be allowed a full hearing in a subsequent proceeding on the issue of whether sufficient facts existed as to authorize the entry of the judgment of adoption. Such, as we understand it, is the substance of the holding by the Supreme Court in the case of De Witt v. Brooks, 143 Tex. 122, 182 S.W. 2d 687, supra."

A full hearing was afforded the appellant in the case before us on his amended motion for new trial, and the court after

said hearing found against appellant and affirmed its original judgment of adoption. We must conclude that this case comes within the purview of the holding in Lee v. Purvin, supra, and that appellant's third and fourth points must be overruled.

The judgment of the trial court is accordingly affirmed.

/s/ WILLIAM E. CLAYTON

William E. Clayton, Associate Justice

CLERK'S OFFICE
COURT OF CIVIL APPEALS
EIGHTH SUPREME JUDICIAL
DISTRICT OF TEXAS

(sealed)
Chief Justice

Clerk

Associate Justices

May 1, 1964.
El Paso Texas,

E. J. Redding, Clerk of the Court of Civil Appeals of the Eighth Supreme Judicial District of the State of Texas, at El Paso, do hereby certify that the preceding 7 pages contain a true and correct copy of the opinion of the Court of Civil Appeals, delivered by Honorable William E. Clayton, A. J., on the 11th day of September, A. D. 1963, in cause No. 5618

In Re:

vs.

Adoption of Molly Page Armstrong, a Minor now on file in office at El Paso.

IN TESTIMONY WHEREOF, I have hereunto set my hand with the seal of said court, the same day and date above written.

By /s/ H. S. POTTER, Deputy

By /s/ H. S. POTTER, Deputy

APPENDIX B

IN THE SUPREME COURT OF TEXAS

January 15, 1964

No. A-9860
R. Wright Armstrong, Jr.

From El Paso County,

vs.

Eighth District.

Salvatore E. Manzo et ux.

Application of petitioner for writ of error to the Court of Civil Appeals for the Eighth Supreme Judicial District having been duly considered, and the Court having determined that the application presents no error requiring reversal of the judgment of the Court of Civil Appeals, it is ordered that said application be, and hereby is, refused.

It is further ordered that applicant, R. Wright Armstrong, Jr. and his sureties, V. G. Apodaca, Jr. and V. G. Apodaca Sr.,

pay all costs incurred on this application.

March 4, 1964.

No. A-9860
R. Wright Armstrong, Jr.

From El Paso County,

vs.

Eighth District.

Salvatore E. Manzo et ux.

Petitioner's motion for rehearing of application for writ of error having been duly considered, it is ordered that said motion be, and hereby is, overruled.

I, GEO. H. TEMPLIN, Clerk of the Supreme Court of Texas, do hereby certify that the above and foregoing is a true and correct copy of the orders of the Supreme Court of Texas in the case numbered and styled as above, as the same appears of record in the minutes of said Court under the dates shown.

WITNESS my hand and the seal of the Supreme Court of Texas, at the City of Austin, this, the 27th day of April, 1964.

GEO. H. TEMPLIN, Clerk
By /s/ GARSON R. JACKSON, Deputy.

Garson R. Jackson,

APPENDIX C

From the Clerk's Office,
Court of Civil Appeals,
El Paso.

In Re:

From El Paso County,

No. 5618 v.
Adoption of Molly Page
Armstrong, a Minor,

Eighth District.

TRANSCRIPT

October 9th., 1962. Appellee's motion to extend the time to brief until October 15th., 1962, submitted.

October 10th., 1962. This day came on to be heard appellee's motion to extend the time to file brief until October 15th, 1962, and the Court having considered the same, is the opinion that the same should be granted.

Wherefore, it is considered, adjudged and ordered that appellee's said motion be, and the same is hereby, granted. June 11, 1963. Appellee's motion to advance submission, submitted.

June 12th., 1963. This day came on to be heard the motion of appellee, to advance submission, and the Court having considered the same, is of the pinion that the same should be granted.

Wherefore, it is considered, adjudged and ordered that appellee's said motion be, and the same is hereby, granted; and

the submission of said cause is here and now set down for submission for Wednesday, July 10th., A. D. 1963.

July 9th., 1963. Appellant's motion to abate adoption proceedings involved herein, submitted.

July 9th., 1963. Appellant's supplemental motion to abate adoption proceedings, submitted.

July 10th., 1963. Submitted on briefs and on oral argument of each party.

July 16th., 1963. Appellant's motion for leave to file supplemental transcript, submitted.

September 11th., 1963. This day came on to be heard appellant's motion to abate adoption proceedings involved herein, and the Court having considered the same, is of the opinion that the same should be overruled.

Wherefore, it is considered, adjudged and ordered that appellant's said motion be, and the same is hereby, overruled.

September 11th., 1963. This day came on to be heard appellant's supplemental motion to abate adoption proceedings, and the Court having considered the same, is of the opinion that the same should be overruled.

Wherefore, it is considered, adjudged and ordered that appellant's said motion be, and the same is hereby, overruled.

September 11th., 1963. This day came on to be heard appellant's motion for leave to file supplemental transcript, and the Court having considered the same is of the opinion that the same should be overruled.

Wherefore, it is considered, adjudged and ordered that appellant's said motion be, and the same is hereby, overruled.

September 11th., 1963. This cause came on to be heard on the transcript of the record, and the same being inspected, because it is the opinion of this Court that there was no error in the judgment, it is therefore considered, adjudged and ordered that the judgment of the Court below be in all things affirmed; that the appellees, Salvatore E. Manzo and Alice Davis Manzo, do have and recover of and from the appellant, R. Wright Armstrong, Jr., and his sureties, V. G. Apodaca, Jr. and V. G. Apodaca, Sr., all costs in this behalf incurred, and this decision be certified below for observance.

October 1st., 1963. Motion of appellant, R. Wright Armstrong, Jr., for a rehearing, submitted.

October 16th., 1963. This day came on to be heard motion of appellant, R. Wright Armstrong, Jr., for a rehearing, and the Court having considered the same, is of the opinion that the same should be overruled.

Wherefore, it is considered, adjudged and ordered that the motion of appellant, R. Wright Armstrong, Jr., for a rehearing, be, and the same is hereby, overruled.

IN THE SUPREME COURT OF TEXAS

R. Wright Armstrong, Jr. From El Paso County
No. A-9860 v.
Salvatore E. Manzo, et ux.
January 15, 1964.

Application of petitioner for writ of error, to the Court of Civil Appeals for the Eighth Supreme Judicial District hav-

ing been duly, considered, and the Court having determined that the application presents no evidence requiring reversal of the judgment of the Court of Civil Appeals, it is ordered that said application be, and hereby is, refused.

It is further ordered that applicant, R. Wright Armstrong, Jr., and his sureties, V. G. Apodaca, Jr. and V. G. Apodaca, Sr., pay all costs incurred on this application.

No. A-9860
March 4, 1964.

Petitioner's motion for a rehearing of application for writ of error having been duly considered, it is ordered that said motion be, and hereby is, overruled.

May 1st., 1964. Now comes appellant, R. Wright Armstrong, Jr., and moves the Court to withdraw the original record filed with the Clerk of this Court consisting of one copy each of all instruments filed with the Clerk of this Court exclusive of the motion to advance and the answer to the motion to advance. For grounds therefor, appellant would show that the judgment of the trial Court was affirmed on September 11, 1963, and thereafter appellant's application for writ was of error filed with the Texas Supreme Court, being refused, no reversible error, on January 15, 1964, and a second motion for rehearing filed and overruled in March, 1964, and that according to Rule 21 (1) of the United States Supreme Court rules, a certified transcript of the record must be filed prior to June 6, 1964, in the United States Supreme Court.

Such papers are to be preserved and kept in their original forms as delivered, and when they have served all necessary purposes in connection with the appeal to the Supreme Court of the United States, are to be returned to the Clerk of this Court. Petitioner and his attorneys are charged with the duty of safe delivery and return of such original papers, will bear all costs of transportation in connection therewith.

/s/ ALAN R. FRASER

Chief Justice of the Court of
Civil Appeals for the 8th
Supreme Judicial District of
Texas.

THE STATE OF TEXAS }
COUNTY OF EL PASO, }

I, E. J. Redding, Clerk of the Court of Civil Appeals in and for the Eighth Supreme Judicial District of the State of Texas do hereby certify that the foregoing on four pages, is a full, true and correct transcript of the orders and judgment, rendered and entered of record in the foregoing entitled and numbered cause, as the same now appear of record in this office.

IN WITNESS THEREOF, I hereunto set my hand and affix the seal of said Court, at El Paso, this the 1st day of May, A. D. 1964.

E. J. Redding, Clerk.
/s/ H. L. POTTER, Deputy.

APPENDIX D

IN THE DISTRICT COURT OF EL PASO COUNTY
120th JUDICIAL DISTRICT OF TEXAS

IN THE MATTER OF THE ADOPTION OF MOLLY PAGE ARMSTRONG, A MINOR } NO. 102485

Judgment
Volume 6
Page 551

THIS, the 27th day of April, 1962, in the above matter, came on to be heard the Petition of SALVATORE E. MANZO, joined by his wife, ALICE DAVIS MANZO, Petitioner, for the Adoption of MOLLY PAGE ARMSTRONG, a Minor, referred to in such Petition; and

It appearing to the Court that such Petition, duly verified by the Affidavit of said Petitioner, was filed and docketed by the Clerk of this Court on the 12th day of March, 1962; that upon such filing and docketing, such Clerk mailed a Certified Copy of such Petition to the Executive Director of the State Department of Public Welfare at Austin, Texas, and noted the date of such mailing upon the docket; that upon the filing of such Petition, the Court appointed a time and place for hearing such Petition; that such order was duly and correctly made and entered of record and that the recitations and facts therein stated were and are true and correct; that on the same day the Court by order appointed an investigator and caused an investigation to be made for the purpose of determining whether such Minor is

a proper subject for adoption, and whether the home of Petitioner is a suitable home for such child; that such order was duly and correctly made and that the recitations and facts stated therein were and are true and correct; that such investigator duly made an investigation in accordance with such order, and having had a reasonable time for such investigation, in accordance with such order duly made a full written report, verified by her affidavit, the result of which investigation was embodied in such full written report, which report was duly filed herein on the 21st day of March, 1962, and was thereupon duly filed with the records of such proceeding, giving all such information as required by law regarding the former environment and antecedents of said child and of the home of the Petitioner; that the facts stated therein were true and correct; that such report prior to this hearing was submitted to the Court and is now before the Court; that such Petition is likewise before the Court, has been duly heard and is sufficient under the law; that the matters, facts and grounds set out in the Petition are all and singularly true and correct; that such Minor is a proper subject for adoption as therein prayed; that the residence of Petitioner is in El Paso County, Texas, which is in the 120th Judicial Court District; that the home of Petitioner is a suitable home for such child, MOLLY PAGE ARMSTRONG, a Minor; that the Court is satisfied that such child and home are suited to each other; that Petitioner and said Minor, MOLLY PAGE ARMSTRONG, are white persons; that Petitioner's wife, ALICE DAVIS MANZO, is the natural mother of said child sought to be adopted; she has given

her consent in writing to such adoption and is desirous that Petitioner shall adopt said child, and jointly with her have the status of a natural parent of said child, and that she joins in this Petition for such purpose, and her consent is filed with the records of this proceeding. Written consent of the natural father, R. W. ARMSTRONG, JR., to the adoption herein sought is not necesaary upon grounds that the said father has not contributed to the support of said minor child commensurate with his ability for a period in excess of two (2) years, and the Judge of a Juvenile Court of El Paso County, Texas, to-wit: Judge David E. Mulcahy, Judge of the 41st District Court, has consented in writing to said Petition for Adoption under provisions of Section 6, Article 46a, Texas Civil Statutes.

Said Minor, MOLLY PAGE ARMSTRONG, has lived for over six months in the home of Petitioner, and the Court having, MOREOVER, heard evidence and found such evidence substantiates the foregoing and that such Petition and leave to effect such adoption should be granted, and such adoption should be effected; and that it would be for the best interest of MOLLY PAGE ARMSTRONG that her name be changed to MOLLY PAGE MANZO; and it appearing to the Court that all prerequisites thereto have been duly and properly performed, it is accordingly ORDERED, ADJUDGED AND DECREED on this 27th day of April, 1962, that such leave and such Petition be, and they are hereby granted, and that such adoption by the Petitioner, SALVATORE E. MANZO, joined by his

wife, ALICE DAVIS MANZO, be, and the same is hereby effected.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that by reason hereof, all legal relationship and all rights and duties between such Child and the natural father shall cease and determine, and such Child is hereafter deemed and held to be for every purpose the child of its parent by adoption, as fully as though naturally born to him in lawful wedlock. Said child shall be entitled to proper education, support, maintenance, nurture and care from said parent by adoption, and said parent by adoption shall be entitled to the services, wages, control, custody and company of said adopted child, all as if the child was his own natural child. For purposes of inheritance under the laws of descent and distribution, such adopted child shall be regarded as the child of the parent by adoption, such adopted child and its descendants inheriting from and through the parent by adoption and his kin the same as if such child was the natural legitimate child of such parent by adoptipn. The next of kin of the natural father of such child, and the natural father of such child, shall not inherit from or through said child, but said child shall inherit from and through her natural parent or parents. Nothing herein shall prevent anyone from disposing of his property by will, according to law. Such adopted child shall be regarded as a child of the parent by adoption for all other purposes as well, except that where a deed, will or other instrument uses words clearly intended to exclude children by adoption, such adopted child shall not be included in such class.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the said MOLLY PAGE ARMSTRONG shall be known the the Christian and Surname as MOLLY PAGE MANZO, from this day forward.

It further appearing to the Court that all costs of this proceeding have been paid, no execution shall issue.

/s/ HANS E. BROCKMOLLER

JUDGE - District Court of El Paso County, Texas, 120th Judicial District of Texas.

APPENDIX E

IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS

ONE HUNDRED TWENTIETH JUDICIAL DISTRICT

IN THE MATTER OF THE ADOPTION OF MOLLY PAGE ARMSTRONG, A Minor. } NO. 102,485

JUDGMENT overruling Motion New Trial
Volume 7
Page 95

JUDGMENT

BE IT REMEMBERED, that on the 22nd day of June, 1962, came on to be heard, in the above styled and numbered cause, the amended motion for new trial and the motion of R. WRIGHT ARMSTRONG, JR., the natural father of the minor child, MOLLY PAGE ARMSTRONG, to set aside the adoption decree entered herein granting leave to SALVATORE E. MANZO, joined in his petition by his wife, ALICE DAVIS MANZO, to adopt said minor child, and came the parties in person and by through their attorneys, and the Court, after considering the pleadings and the evidence, is of the opinion that the said motion of R. WRIGHT ARMSTRONG, JR., should be in all things overruled and denied;

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the amended motion for new trial and the motion of R. WRIGHT ARMSTRONG, JR.,

to set aside the adoption decree entered herein granting leave to SALVATORE E. MANZO to adopt said minor child, be and the same is herby in all things overruled and denied, and that said adoption decree entered herein is in all things confirmed. Courts assessed on motion for new trial against R. WRIGHT ARMSTRONG, JR., for which execution may issue.

To all of which, in open Court, the said R. WRIGHT ARMSTRONG, JR. then and there excepted and gave notice of appeal to the Court of Civil Appeals for the Eighth Supreme Judicial District of Texas, at El Paso, Texas.

RENDERED and ENTERED in open Court, on the 29th day of June, 1962

/s/ HANS E. BROCKMOLLER

JUDGE

APPROVED AS TO FORM:

/s/ W. O. CRAFT

W. O. Craft, Attorney for Salvatore E. and Alice Davis Manzo

/s/ W. BARTON BOLING

W. Barton Boling, Attorney for R. Wright Armstrong

APPENDIX F

IN THE
COURT OF CIVIL APPEALS
FOR THE EIGHTH SUPREME JUDICIAL
DISTRICT OF TEXAS,
AT EL PASO

FILED IN
COURT OF CIVIL APPEALS
JUL 1, 1963
ED C PERSHING
CLERK 8th DISTRICT

IN THE MATTER OF ADOPTION
OF MOLLY PAGE ARMSTRONG, a Minor } NO. 5618

APPEAL FROM THE DISTRICT COURT OF EL PASO COUNTY, TEXAS, ONE HUNDRED TWENTIETH JUDICIAL DISTRICT

MOTION TO ABATE ADOPTION

Comes now, R. Wright Armstrong, Jr., Appellant, and presents this, his motion to abate the adoption proceedings involved herein, and without waiving any matters urged by him in his brief on file, moves the Court to estop the appel-

lees from pursuing the adoption of Molly Page Armstrong, a minor, for the following reasons:

STATEMENT

On November 6, 1959, Alice Davis Manzo, then Alice Davis Armstrong, was divorced from R. Wright Armstrong, Jr., the Appellant in Tarrant County, Texas. In that divorce, Alice Davis Manzo was awarded custody of their only child, Molly Page Armstrong, and the Appellant was ordered to pay $50.00 per month as child support.

Alice Davis Manzo then married Salvatore E. Manzo on March 11, 1960. On March 12, 1962, Salvatore E. Manzo, joined by his wife Alice Davis Manzo, the Appellees, filed their petition for leave to adopt Molly Page Armstrong, (Tr. 2-5). By judgment dated April 27, 1962, Salvatore E. Manzo was granted leave to adopt Molly Page Armstrong. (Tr. 9-12). The Appellant did not consent to the adoption and was not notified of the adoption proceedings until after entry of said judgment.

Immediately upon learning of the adoption and judgment, Appellant, on May 7, 1962, filed a motion for new trial (Tr. 13,14) and on May 25, 1962, filed an amended motion for new trial and motion to vacate judgment. (Tr. 15-18). Appellant's motion was heard by the Court, without a jury, on June 22, 1962, which hearing resulted in a judgment dated June 29, 1962, overruling and denying Appellant's motion and confirming the adoption judgment. (Tr. 20). Appellant gave notice and duly perfected his appeal. The matter is presently pending before this Court.

Following perfecting this appeal and the filing of briefs herein, Mr. Winfred Hooper, Jr., attorney for Alice Davis Manzo, by letter dated November 26, 1962, the original of said letter being attached hereto as exhibit "A"and made a part hereof, which letter was received by the Appellant, demanded of the Appellant that he pay to Mrs. Manzo all child support arrearage from February, 1960, to the date of said letter. Thereafter the Appellant borrowed $1,550.00, and in compliance with Mrs. Manzo's demand of November 26, 1962, tendered such amount along with a Bill of Interpleader into the 96th District Court of Tarrant County, Texas, the Court granting the divorce and ordering the child support. This was the first demand of Mrs. Manzo for child support from the Appellant since her marriage to Mr. Manzo.

In response, Mrs. Manzo on March 22, 1963, filed her "Motion to Compel Payment of Child Support", a certified copy of which is attached hereto as exhibit "B" and made a part hereof, wherein Mrs. Manzo requested that the $1,550.00 deposited with the Court be paid over to her and that if such were not done that Appellant be found in contempt of Court for failing to do so. On May 3, 1963, Appellant filed his reply to her motion to compel payment of child support, a certified copy of such reply being attached hereto as exhibit "C" and made a part hereof.

Also, on May 3, 1963, Appellant filed his First Amended Bill of Interpleader, a certified copy of which is attached hereto as exhibit "D" and made a part hereof, wherein Appellant requested that the funds on deposit with the Court

remain on deposit until upon proper evidence before the Court, the Court could make a proper disposition of the money. On May 14, 1963, Mrs. Manzo filed a "Complaint For Contempt of Non-Payment of Child Support", a certified copy being attached hereto as exhibit "E" and made a part hereof, wherein it was asked that Appellant show cause why he should not be held in contempt for failure to pay the child support ordered by the Court on November 6, 1959; that the $1,550.00 be paid to Mrs. Manzo, and that Appellant be ordered to pay an additional amount of $583.33 to Mrs. Manzo as her necessary and reasonable attorney's fee. Mrs. Manzo's husband, Salvatore E. Manzo, also signed such contempt complaint as shown on exhibit "E" hereto.

All of the foregoing matters in the 96th District Court of Tarrant County, Texas, are still pending before that Court.

ARGUMENT AND AUTHORITIES IN SUPPORT OF THIS MOTION

Adoption is a creature of statute, and the Courts uniformly apply the rule of strict construction in favor of a parent's natural rights, especially in those cases where it is claimed that owing to some misconduct the consent of the natural parent is not required. *Stinson v. Hasco*, 316 S.W. 2d 900 (Civ. App. 1958, no writ hist.); 1 Am. Jur. 626, Adoption of Children, Sec. 9.

Although the Manzos knew the whereabouts of the Appellant at all times, they never at any time sought his consent to the adoption, or made any effort to advise him of the

adoption proceedings (S.F. 9, 29, 30, 100) The truth of the matter is that the Manzos did not want Appellant to know of the adoption proceedings until after the fact. It is interesting to note that it was only by virtue of a letter from Mr. Manzo to Appellant's father advising him of the adoption that the Appellant learned of it at all. (S.F. 100) The statement of facts is replete with evidence showing that the Appellant was being lulled by discussions of visitation by the child in Fort Worth at the time the Manzos were hurriedly trying to push through the adoption.

It is submitted that Mr. Manzo would never have advised anyone in Fort Worth of the adoption, even after the judgment of adoption, if they had not believed the adoption was final and complete. The testimony of Mrs. Manzo shows that even at the trial of this matter she believed the adoption to be final. On Page 2 of the Statement of Facts we find,

"Q. As I understand it, you and Mr. Armstrong had one child, is that correct?

"A. That is correct.

"Q. What is the child's name?

"A. Molly Page.

"Q. Molly Page Armstrong?

"A. Right now it is Molly Page Manzo."

The grounds for seeking the adoption without obtaining the consent of the Appellant were that the Appellant had not contributed substantially to the support of the child

during a two year period commensurate with his financial ability. The Manzos swore to that "fact" in their adoption petition (Tr. 3). The two year period involved is March 12, 1960, until April 27, 1962. Although the Manzos swore to such "facts" to the Court and to similar "facts" to the Juvenile Court (Tr. 5), Mrs. Manzo admitted under oath at the trial that she had made no investigation as to how much money the Appellant was making (S.F. 10), and Mr. Manzo admitted he had made no investigation as to what the Appellant's employment was, what his income was, or what his financial ability was. (S.F. 26). In fact, Mrs. Manzo admitted she never attempted to get the Appellant to pay any child support after she married Mr. Manzo on March 11, 1960, (S.F. 8). Mr. Manzo admitted there were no efforts made to get the Appellant to pay support. (S.F. 27). Both Mr. and Mrs. Manzo testified that part of the reason no efforts were made to get support from the Appellant was the fact that they wanted the adoption to go through without having to get Appellant's consent. (S.F. 13, 14, 27, 28). It is obvious and undisputed from that testimony alone that the Manzos, after their marriage, started this scheme to adopt the girl and were planning it in such a way that they would not need Appellant's consent, the consent they knew he would never give, because of his great love for his daughter.

The law contemplates an adoption without consent of the natural parent only under circumstances which show willful acts, or a course of conduct by the parent which shows a con-

scious disregard or indifference to the child in respect to the parent's obligation to the child. Section 6 of Article 46a regarding non-support for a two year period is in line with this. It is not the fact of non-support taken in a vacuum but it contemplates a conscious disregard of the duty to support, a willful act of non-support which shows an indifference to the child. It not only contemplates lack of support, it contemplates a failure of support under conditions where the parent had the ability to support. It is not only a matter of money as the Manzos would have this Court believe, but it is a matter of mind and money. Appellant's brief adequately points this up and abundantly shows that the Appellant did contribute during the period commensurate with his financial ability, consequently further discussion and authority for the point will not be undertaken here.

The law also contemplates, or should contemplate, fair dealings on the part of persons attempting to adopt children without notice to or consent of the natural parent. This is pointed up to some degree by the Courts that have refused to affirm adoptions when it is discovered the adopting parties induced the non-support or other acts by the natural parent on which they later rely to seek an adoption without notice or consent of that natural parent. See *Newton v. Paslay*, 307 S.W. 2d 305 (Civ. App. 1957, no writ hist.). When it appears from the record as a whole that the adopting parties have not acted fairly or equitably as regards the natural parent, then no adoption should be permitted to stand against the natural parent's objections thereto. This is particularly true when the unfair and inequitable dealings on the

part of the adopting parties occasion the grounds for seeking the adoption without notice or consent from the natural parent. This is strongly brought to mind when it is remembered the adopting parties are not scheming to obtain someone's automobile or land but are scheming to take a person's child. The sadness of the situation is greatly enhanced when, as in this case the evidence conclusively establishes that the child and her father have great mutual love and respect for each other. We must remember we are dealing with human beings.

The Manzos, by their actions, dealt unfairly and inequitably not only with the Court but also with the Appellant. The following points this up:

1. The Manzos knew where the Appellant was at all times and yet deliberately kept from him any hint they were planning on adopting his only child.

2. The Manzos swore to the Court in their petition that the Appellant has failed to contribute to the support of his child for a two year period commensurate with his financial ability and yet Mrs. Manzo made no investigation as to how much money the Appellant was making and Mr. Manzo made no investigation as to what the Appellant's employment was, what his income was, or what his financial ability was.

3. After her marriage to Mr. Manzo, Mrs. Manzo never sought support from the Appellant and in fact both the

Manzos hoped he would not support so they could push the adoption without his consent.

4. Mr. Manzo never notified the Appellant of the adoption until after the judgment of adoption which the Manzos believed to be final and then he merely wrote to the Appellant's father.

5. After the trial court denied Appellant's contest of the adoption and after having asserted their intention to adopt the child without Appellant's consent because of his alleged failure to support for a two year period (March 12, 1960—March 12, 1962), and after testifying that they had not sought support during that period partially because they wanted to be able to adopt the child without consent of the Appellant, Mrs. Manzo, with the blessings of Mr. Manzo, then demanded support for all of that period and now threatens to hold Appellant in contempt of Court if he does not pay all such support.

This is one of the harshest and most inequitable situations the adoption law can contemplate. How can the Manzos, under the letter and spirit of the law, be able to obtain an adoption on the basis of non-support which the testimony shows they consented to and then when the trial court affirmed the adoption over the natural parent's contest, to use another court to demand the immediate payment of that same money under threat of contempt? Surely they cannot have their cake and eat it too. By doing so the

Manzos have affirmatively abandoned the very basis on which they urge the affirmance of the non-consent adoption. For instance, can a person sue for an injunction to prevent collection of property taxes from him on land he claims he has never owned, and then after obtaining a favorable decision go into another court and sue another for the same land claiming he has owned the land for years? By the same token how can the Manzos on the one hand consciously consent to Appellant's alleged non-support in order to get a non-consent adoption and then when a favorable ruling is received to go into another court and reverse themselves and demand that same support under threat of contempt. The two positions, under our facts are contrary to each other and inconsistent as a matter of law. It shows a complete abandonment by the Manzos of their alleged theory of non-support. Having abandoned their theory of non-support and having taken a contrary position while the adoption is still pending and while the adoption is not yet final, the Manzos should now be estopped to assert before this Court or any Court the proposition that the Appellant failed to contribute as provided for in Section 6 of Article 46a.

The Appellant would further point out that since this adoption has never become final, the position taken by the Manzos completely destroys their right to adopt the child without consent of the Appellant, and no consent having been given, neither this or any other Court has jurisdiction to grant the adoption. *Pearce v. Harris*, 134 S.W. 2d 859

(Civ. App. 1939, no writ hist.) The Manzos, by making demand for the support and instituting contempt proceedings to enforce its payment while the adoption is not final and is still pending before this Court, have created a situation where the money, all of it, could be ordered paid at any time. Such a payment could be made while this case is still pending, resulting in the abolition of any non-support theory, because such a payment would span and cover all periods of alleged non-support contained in their pleadings and would abolish any legal or factual argument that there has been non-support.

Since payment would completely destroy the Manzos right to adopt without consent, and since there is no consent, and since consent is jurisdictional, the adoption proceedings of the Manzos should be abated in their entirety. Alternatively Appellant urges that these proceedings be returned to the trial court for further hearing to determine the factual and legal basis and effect of the contempt proceedings instituted by the Manzos in the 96th District Court of Tarrant County, Texas, and for the Court or jury, as the case may be, to make findings of fact and conclusions of law in regard thereto.

WHEREFORE, premises considered, Appellant prays and moves the Court to estop the Appellees from asserting non-support as a basis for granting or affirming the adoption when the Appellant did not consent thereto; to abate the entire adoption proceedings instituted by Appellees, or alternatively to send these proceedings back to the trial court

for further findings of facts and conclusions of law as regards the subsequent contempt proceedings instituted by the Appellees in Tarrant County, Texas.

Respectfully Submitted,

MORGAN & BOLING

By /s/ M. BARTON BOLING

W. Barton Boling
601 Bassett Tower
El Paso, Texas
Attorneys for Appellant

I certify I have this 1st day of July, 1963, delivered a copy of the foregoing Motion and its exhibits to the office of Mr. Winfred Craft, attorney for the Appellees.

/s/ W. BARTON BOLING

W. Barton Boling

By /s/ JOE D. MORSE

EXHIBIT "A"

CRUMLEY AND HOOPER
LAW OFFICES
1405 FAIR BUILDING
FORT WORTH 2, TEXAS

FRANK E. CRUMLEY
WINFRED HOOPER, JR.
ROSWALD E. SHRULL
WILLIAM M. MURPHY

November 26, 1962

TELEPHONE
EDison 6-2311
EDison 6-1658

Mr. R. Wright Armstrong, Jr.
Judge, Corporation Court No. 2
921 Monroe Street
Fort Worth, Texas

Re: Molly Page Armstrong
Child Support

Dear Judge Armstrong:

We have been employed by Mrs. S. E. Manzo to collect the child support due under order of the 96th District Court which is in arrears for the period from February, 1960, to the current date, with the exception of the $50.00 payment which you recently made.

Please let us have your remittance of the arrearage, through the Child Support Office of Tarrant County, within ten days after your receipt of this letter.

Very truly yours,
CRUMLEY & HOOPER
/s/ W. HOOPER
Winfred Hooper, Jr.

WH/jp
CERTIFIED—RETURN
RECEIPT REQUESTED
cc: Mr. Don Prager
Mr. Ronald Aultman
Mr. S. E. Manzo

EXHIBIT "B"

NO. 16544-F

F. D. ARMSTRONG
VS.
R. W. ARMSTRONG, JR.

IN THE DISTRICT COURT OF
TARRANT COUNTY, TEXAS
96TH JUDICIAL DISTRICT

MOTION TO COMPEL PAYMENT OF CHILD SUPPORT

OF SAID HONORABLE COURT:

Now comes Flournoy Manzo, formerly F. D. Armstrong, complaining of R. W. Armstrong, Jr., and respectfully moves the court to enter order compelling payment of child support, and would respectfully show the court as follows:

I

On November 6, 1959, a judgment was entered under the terms of which the said R. W. Armstrong, Jr. was ordered to pay child support of $50 per month. Defendant R. W. Armstrong, Jr. did not pay such child support as ordered by the court, but has wholly failed and refused to do so, with the exception of a small amount paid immediately after the order was entered.

II

This court, in a recent hearing, made a ruling that the parental rights of R. W. Armstrong, Jr. to the child Molly Page Armstrong have not terminated and will not terminate until final judgment of the Court of Civil Appeals sitting in El Paso has rendered final judgment in an adoption contest between the parties. Accordingly, the correlative duty of defendant R. W. Armstrong, Jr. to pay the child support ordered by the court remains in full force and effect, and child support arrearage should be paid, or defendant R. W. Armstrong, Jr. should be held in contempt. R. W. Armstrong, Jr. has deposited in the registry of the court $1550 by cashier's check representing such child support. Plaintiff seeks order of the court that said child support be paid to the Child Support Officer of Tarrant County, Texas, and in turn be forwarded to her, and that all other child support payments now in arrears be ordered paid by defendant R. W. Armstrong, Jr. and if not paid that he will be held in contempt of this court.

WHEREFORE premises considered, plaintiff prays that upon hearing hereof, the amount of $1,550 now deposited in the registry of this court be ordered paid to Walter Echols, Child Support Officer of Tarrant County, Texas and in turn transmitted to her, and that defendant R. W. Armstrong, Jr. be ordered to pay any and all other child support payments in arrears, and that upon his failure to do so, he be held in contempt of this court, and that all costs in this behalf expended be assessed against R. W. Arm-

strong, Jr. and for such other and further relief to which plaintiff may show herself justly entitled, at law or in equity.

CRUMLEY AND HOOPER

By /s/ WINFRED HOOPER, JR.

Winfred Hooper, Jr.
1405 Fair Building
Fort Worth, Texas
ATTORNEYS FOR PLAINTIFF

18F

EXHIBIT "C"

NO. 16544-F

F. D. ARMSTRONG
VS.
R. W. ARMSTRONG, JR.

IN THE DISTRICT COURT OF
TARRANT COUNTY, TEXAS
96TH JUDICIAL DISTRICT

DEFENDANT'S REPLY TO PLAINTIFF'S MOTION TO COMPEL PAYMENT OF CHILD SUPPORT

TO SAID HONORABLE COURT:

Now comes R. W. Armstrong, Jr. defendant in the above styled and numbered cause, and without waiving any of the rights, claims and allegations in Defendant's Bill of Interpleader, files this, his answer to Plaintiff's Motion to Compel Payment of Child Support, and for such answer would respectfully show the Court:

1.

Defendant specially denies so much of Paragraph I of said Motion as states "Defendant, R. W. Armstrong, Jr., did not pay such child support as ordered by the Court, but has wholly failed and refused to do so, with the exception of a small amount paid immediately after the order was entered." For the reasons that, and by way of affirmative defense, defendant would show the Court that during the time he allegedly did not make child support payments

as ordered by the Court, if indeed such payments were not made or the money received by the plaintiff other than through the Child Support Office, that the said payments by reason of incapacitating illness, such illness being so severe as to prevent him from working during the said period of time the payments were allegedly not made, or from pursuing any type of economic or profitable endeavor. Further, defendant would show that during this period of time he had little or no income, was dependent upon others for support, and was involuntarily unable to make said payments during that period.

2.

Defendant would further show, and further by way of affirmative defense, that during the period of time mentioned in plaintiff's motion where defendant allegedly did not make child support payments, that he was assured by plaintiff that she realized that defendant was involuntarily incapable and unable to make such payments as ordered by the Court; further said plaintiff assured the defendant that he did not have to worry about making such payments at that time since no money was necessary for the support of the child at that time and that the child was being well cared for and not in need of anything, and that Salvatore Manzo at that time was a colonel in the U. S. Air Force and was well able to support the child at that time which he volunteered to do. Defendant would show that said statements on the part of plaintiff and her current husband were deliberately and fraudulently made to induce defendant not

to pay child support or go back into court to have said child support payments reduced, so that plaintiff and her current husband could, through fraudulent means, attempt to adopt defendant's child without his knowledge or consent.

3.

Defendant would further show the Court and by way of affirmative defense, that the child support payments record of Tarrant County, Texas, does not reflect the entire amount that defendant has contributed for the support of said child. In this respect, defendant would show unto the Court that during all visitations of his child with the defendant the child was supported wholly by the defendant. Such support consisted of food, clothing and entertainment plus some educational expenses. These visitations amount to approximately six weeks during each of the years 1960 and 1961.

4.

Defendant would further show that two house payments were made by him after the divorce was granted in 1959 amounting to approximately $232.00. Such payments were necessary in order to sell the house. Defendant would further show that a payment of approximately $78.00 was made to cover insurance on the homestead after the divorce, such payments being made out of the separate property of the defendant, Defendant would further show that the amount of the proceeds of the sale of the homestead, approximately $875.00 was to the plaintiff and approximately

$150.00 was retained by the defendant from such proceeds. The amount sent to the plaintiff was a gift and amounted to some $375.00 over and above the amount agreed upon.

All of the above proceeds were alloted to the plaintiff in lieu of and to be regarded as child support as the defendant was unable to send any child support due to illness at this time.

Defendant would further show that he paid community debts of approximately $4,000.00 out of his personal funds and that half of such should be credited to the defendant as child support.

5.

Defendant would further show this Court that the plaintiff is coming into court asking for equity without clean hands, that plaintiff and her current husband has sought to adopt the child of defendant fraudulently, without notice to the defendant, though his address was well known to them at all times; that defendant has offered at another hearing in El Paso, Texas to settle any differences between the parties, and plaintiff has refused to allow defendant to see or visit his child last year during Christmas, or to name some other time in lieu of Christmas, although realizing that the only recourse left to defendant was a contempt hearing in this Court.

6.

Defendant denies each and every, all and singular, the allegations in Plaintiff's Motion contained, and of this, he puts himself upon the country.

WHEREFORE, PREMISES CONSIDERED, defendant prays that the Motion of the plaintiff be in all things denied and further that the Court order that the defendant is not now and has never been in contempt; that defendant contributed to the support of minor child to the best of his ability during the mentioned time in the Plaintiff's Motion, and in the alternative that the Court determine at which point and time the defendant recovered from his illness sufficiently to make child support payments as ordered by the Court; and make such order as to the Court seems just in regards to the disbursement of the funds paid into the registry of the Court under the previous Bill of Interpleader.

RONALD AULTMAN
Attorney for Defendant
Union Bank Building
Fort Worth, Texas
EDison 2-4458

EXHIBIT "D"

NO. 16544-F

F, D. ARMSTRONG
VS.
R. W. ARMSTRONG, JR.

IN THE DISTRICT COURT OF
TARRANT COUNTY, TEXAS
96TH JUDICIAL DISTRICT

FIRST AMENDED BILL OF INTERPLEADER

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now R. W. Armstrong, Jr., Defendant in the above styled and numbered cause, and proponent of this Bill of Interpleader, complaining of F. D. Armstrong (Flournoy Manzo), the Plaintiff in the above styled and numbered cause, who resides at 3012 Titanic Drive, El Paso, Texas, where service upon her may be obtained.

I.

That on the 6th day of November, 1959, a Judgment was entered, whereby the parties hereto were divorced from the bonds of matrimony and the Court in said Judgment order child support to be paid in the amount of $50.00 per month commensurate with the Defendant's ability to pay.

II.

That the Defendant, R. W. Armstrong, Jr., paid as ordered by the Court for a short period and then through illness, was unable to work, therefore, unable to pay as so ordered.

III.

That certain amounts were paid, both in monies and in goods, since said divorce, by the Defendant, and the minor child, Molly Page Armstrong, visited in the home of the Defendant continuously since said divorce.

IV.

That on April 27, 1962, unknown to the Defendant, the husband of the Plaintiff above, Salvatore E. Manzo, adopted the minor child without the consent, notification or service on R. W. Armstrong, Jr., which adoption was predicated upon abandonment, and said adoption being on appeal before the Eighth Supreme Judicial District in El Paso, Texas, No. 5618, whereby R. W. Armstrong, Jr., is appellant. After the entry of the Judgment for adoption, to-wit: April 27, 1962, Salvatore Manzo's attorney has made demand upon R. W. Armstrong, Jr., to wit: November 26, 1962, or some eight (8) months after the adoption and some seven and one-half (7 1/2) months after the adoption proceeding was appealed, a copy of said demand being attached hereto and made a part hereof for all purposes whatsoever.

V.

The Defendant, R. W. Armstrong, Jr., deposits with the Court, a cashier's check in the amount of $1,550.00 in compliance with the attached demand, said check being identified as Defendant's Exhibit "B" and a copy of the note whereby this amount has been borrowed identified as Defendant's Exhibit "C" and if he does owe for the sup-

port of said minor child any monies, the amount thereof is unknown to him, but cannot exceed the attached check.

WHEREFORE, premises considered, the Defendant, R. W. Armstrong, Jr., respectfully requests that the Plaintiff above be served according to law and that the attached monies be placed within the registry of the Court and remain in the registry of the Court, and that upon proper evidence before the Court, the money attached hereto be disbursed to said minor child, or that the monies attached hereto be returned to R. W. Armstrong, Jr., if no such showing is made, and for any other and further relief, to which the Defendant may show himself justly entitled.

BYROM, WRIGHT, BUTCHER & PRAGER

By: /s/

818 Continental National Bank Bldg.
Fort Worth 2, Texas

MATTHEWS, AULTMAN & RILEY

By: /s/

412 Sinclair Building
Fort Worth 2, Texas
ATTORNEYS FOR DEFENDANT,
R. W. ARMSTRONG, JR.

EXHIBIT "E"

NO. 16544-C

F. D. ARMSTRONG
VS.
R. W. ARMSTRONG, JR.

IN THE DISTRICT COURT OF
TARRANT COUNTY, TEXAS
96TH JUDICIAL DISTRICT

COMPLAINT FOR CONTEMPT OF NON-PAYMENT OF CHILD SUPPORT

TO SAID HONORABLE COURT:

Now comes Flournoy Manzo, plaintiff, (formerly F. D. Armstrong, plaintiff) complaining of R. W. Armstrong, Jr., defendant, who resides in Fort Worth, Tarrant County, Texas, and files this complaint, asking that the said R. W. Armstrong, Jr. be notified to appear and show cause why he should not be held in contempt for failing to obey the order of this court dated November 6, 1959, and would respectfully show the court as follows:

I.

On November 6, 1959, a judgment of divorce was entered, divorcing plaintiff and defendant, and ordering the defendant to pay unto Walker Echols, Child Support Officer of Tarrant County, Texas, and his successors in office, the sum of fifty dollars ($50.00) per month, beginning November 16, 1959, and continuing thereafter on the 16th day of each succeeding month until further order of this court, for

the support of the minor child of the parties, Molly Page Armstrong.

II.

Defendant made the following payments only in support of his said child, in obedience to the order of this court:

December, 1959	$50.00
February, 1960	150.00
November, 1962	50.00
December, 1962	75.00
January, 1963	25.00

In addition, defendant has filed what he called a "Bill of Interpleader", and has deposited with the registry of the court the sum of one thousand five hundred fifty dollars ($1,550.00), which he refuses to pay to the Child Support Officer of Tarrant County, in obedience to the order of this court, but made his deposit conditioned on the outcome of other litigation now pending in El Paso County, Texas. The total amount of child support payments due under the order of the court from November 6, 1959 to May 6, 1963 is two thousand one hundred dollars ($2,100.00). The obligation of the defendant R. W. Armstrong, Jr., to support his daughter Molly Page Armstrong is absolute and unconditional. His conduct in failing to obey the order of this court constitutes a contempt of this court, for which action he should be held to account. The deposit of $1,550.00 conditionally tendered to the court by defendant R. W. Armstrong, Jr. should be by the court ordered paid and delivered by the clerk to Walker Echols, Child Support Officer

of Tarrant County, Texas, for transmittal to the mother of the child, plaintiff.

III.

Pleading further and specially, plaintiff would show that it has been necessary to engage the services of the undersigned attorneys for collection of the child support arrearages due under order of the court, for filing this complaint for contempt, and for preparation and trial of this matter, and that she has agreed to pay said attorneys an attorney's fee of one-third of the amount of child support arrearage collected under order of this court, which is a reasonable fee for their necessary services. Plaintiff would show that the court should order that defendant pay the sum of five hundred eighty three dollars and 33/100 ($583.33) to plaintiff as her reasonable and necessary attorney's fee in this proceeding.

WHEREFORE premises considered, plaintiff prays that respondent be notified to appear at a time fixed by this court not less than ten days after his receipt of notice and show cause why he should not be held in contempt of the order of this court dated November 6, 1959; that the amount of $1,550.00 now deposited in the registry of the court be ordered paid to Walker Echols, Child Support Officer of Tarrant County, Texas and in turn transmitted to plaintiff, and that defendant R. W. Armstrong, Jr. be ordered to pay any and all other child support payments in arrears, and that on his failure to do so, he be held in contempt of this court, that plaintiff have and recover judgment for $583.33 as

her reasonable and necessary attorney's fee in this proceeding, that all costs in this behalf expended be assessed against R. W. Armstrong, Jr.; and for such other and further relief to which plaintiff may show herself justly entitled, at law or in equity.

/s/ FLOURNOY MANZO

Flournoy Manzo

/s/ SALVATORE E. MANZO,

Salvatore E. Manzo, Pro Forma

CRUMLEY AND HOOPER

BY /s/ WINFRED HOOPER, JR.

Winfred Hooper, Jr.

1405 Fair Building,
Fort Worth 2, Texas
ATTORNEYS FOR PLAINTIFF

STATE OF TEXAS }
COUNTY OF EL PASO }

Before me, the undersigned authority, on this day personally appeared Flournoy Manzo, who upon her oath, stated that the above and annexed writing and the allegations thereof are true and correct.

/s/ FLOURNOY MANZO

Flournoy Manzo

SWORN to and subscribed before me this .....day of April, 1963, certify which whitness my hand and seal of office.

(SEAL)

.....

NOTARY PUBLIC, in and for
EL PASO COUNTY, TEXAS

16544-F

F. D. ARMSTRONG
VS.
R. W. ARMSTRONG
TO THE CLERK:

Please issue notice to R. W. Armstrong, Jr. to appear before the 96th District Court on the 21st day of May, 1963 at 10 o'clock A.M. and show cause why he should not be held in contempt of this court for his failure to make child support payments as heretofore ordered.

/s/ FISHER T. DENNY

.....

JUDGE PRESIDING
96TH DISTRICT COURT
TARRANT COUNTY, TEXAS

THE STATE OF TEXAS }
County of Tarrant }

I, George Johnson, Clerk of the District Courts of Tarrant County, Texas, do hereby certify that the above and fore-

going is a true and correct copy of (1) MOTION TO COMPEL PAYMENT OF CHILD SUPPORT; (2) DEFENDANT'S REPLY TO PLAINTIFF'S MOTION TO COMPEL PAYMENT OF CHILD SUPPORT; (3) FIRST AMENDED BILL OF INTERPLEADER and (4) COMPLAINT FOR CONTEMPT OF NON-PAYMENT OF CHILD SUPPORT.

In Cause No. 16544-F F. D. ARMSTRONG VS R. W. ARMSTRONG, JR. as the same appears on the file and/or of record in my said office.

GIVEN UNDER MY HAND and seal of Said Court at office in the City of Fort Worth, Tarrant County, Texas, this the 28th day of June A.D. 1963.

/s/ GEORGE JOHNSON

Clerk, District Courts, Tarrant County, Tex.

By /s/ JULIE CURTISS

Deputy

APPENDIX G

A-9860

IN THE
COURT OF CIVIL APPEALS
FOR THE EIGHTH SUPREME JUDICIAL
DISTRICT OF TEXAS,
AT EL PASO
FILED IN
COURT OF CIVIL APPEALS
JULY 9, 1962
E. J. REDDING
CLERK 8th DISTRICT
BY /s/ H. L. POTTER
Deputy

IN THE MATTER OF ADOPTION
OF MOLLY PAGE ARMSTRONG, a Minor } NO. 5618

APPEAL FROM THE DISTRICT COURT OF EL PASO COUNTY, TEXAS, ONE HUNDRED TWENTIETH JUDICIAL DISTRICT

SUPPLEMENTAL MOTION TO ABATE ADOPTION PROCEEDINGS

Comes now, R. Wright Armstrong, Jr., Appellant, and presents this his supplemental motion to abate the adoption proceedings involved herein, and without waiving any matters urged by him in his brief on file, and in addition to the

matters contained in his "Motion to Abate Adoption" on file herein, to which motion reference is hereby made, would also show the following:

I

That heretofore as shown in Appellant's Motion to Abate and its attached certified exhibits, the Appellees made demand for all child support payments the Appellant was allegedly in arrears and sought to enforce the payment of such funds through contempt proceedings. The period of non-support sought to be collected through such contempt proceedings is the same period the Appellees urged as grounds for seeking the adoption of Appellant's only child without notice to or consent of the Appellant.

II

That pursuant to such contempt proceedings instituted by the Appellees a hearing was had in the 96th Judicial District Court of Tarrant County, Texas, on July 8, 1963. That pursuant to such hearing said Court entered an order denying that the Appellant was in contempt of that Court for having failed to make such support payments, and specifically found that the Appellant did contribute to the support of said minor child commensurate with his ability since November, 1959, a certified copy of such order being attached hereto as Exhibit "A" and made a part hereof.

III

That pursuant to such hearing and order, all child support payments due by the Appellant since his divorce in

1959, have been fully paid and no support is currently owing by the Appellant. Attached hereto as Exhibit "B" are supplemental authorities and arguments in support of Appellant's "Motion to Abate Adoption" and this supplemental motion.

WHEREFORE, PREMISES CONSIDERED, Appellant prays that the relief sought in his "Motion to Abate Adoption" be granted by this Court.

Respectfully Submitted

MORGAN & BOLING

BY: /s/ W. BARTON BOLING

W. Barton Boling
Attorney for Appellant

I certify that a copy of the foregoing Supplemental Motion and its Exhibits was delivered to the office of W. O. Craft, Attorney for the Appellees, this 9th day of July, 1963.

/s/ W. BARTON BOLING

W. Barton Boling

EXHIBIT "A"

NO. 16544-C

F. D. ARMSTRONG
vs.
R. W. ARMSTRONG

IN THE DISTRICT COURT
TARRANT COUNTY, TEXAS
96TH JUDICIAL DISTRICT

ORDER

On this the 8th day of July, 1963, came to be heard plaintiff's motion to hold defendant in contempt of court and to compel payment of child support and came the Plaintiff by and through her attorney and came the defendant in person and by and through his attorney of record and the defendant announced ready for trial, the plaintiff by her attorney offered to the court a motion for continuance which motion was in all things denied and the trial proceeded before the court without the intervention of a jury since neither party had requested a jury, and the court after having read the pleadings, heard all the evidence including testimony from several witnesses is of the opinion and finds as follows:

1. That immediately after the divorce of the parties hereto on November 6, 1959, that the defendant R. Wright Armstrong, Jr., became physically and mentally ill which rendered him involuntarily incapable of earning sufficient

income from which to pay child support as ordered herein; and that such condition continued until March of 1962; and that the defendant did contribute to the support of the minor child in question, Molly Page Armstrong, commensurate with his ability at all times in question since November, 1959; that defendant at this time has paid all amounts in arrears and now owing by reason of the order heretofore entered herein; that a part of said payment was made by depositing $1,550.00 into the registry of this court and that said amount should be paid to the child support office of Tarrant County, to the plaintiff's herein for the support of Molly Page Armstrong; and that upon said money being paid the court finds that the defendant R. Wright Armstrong, Jr. is not in contempt of court and that Plaintiff's motion except as hereinbefore stated is in all things denied.

IT IS THEREFORE ACCORDINGLY Adjudged and decreed plaintiff's motion to find defendant, R. Wright Armstrong, Jr., in contempt of court is in all things denied and that the defendant, R. Wright Armstrong, Jr., is not in contempt of court.

IT IS FURTHER ORDERED that the District Clerk shall immediately transfer the money which has been deposited by the defendant in the registry of this court, to wit: $1,550.00, to the child support office of Tarrant County, Texas, for payment to plaintiffs.

/s/ FISHER T. DENNY

Judge

Approved as to Form
/s/ ROSWALD E. SHRULL

Plaintiff

/s/ RONALD AULTMAN

Defendant

A CERTIFIED COPY,
ATTEST: 7-8 1963
GEORGE JOHNSON
District Clerk, Tarrant
County, Texas
By /s/ PAT WELLS

Deputy

EXHIBIT "B"

SUPPLEMENTAL ARGUMENT AND AUTHORITIES IN SUPPORT OF APPELLANT'S MOTION TO ABATE ADOPTION

As pointed out in Appellant's brief, the Appellant did contribute to the support of his child commensurate with his financial ability. That point was fully attested to not only by the Appellant but also by Mr. Elmo Irby, Dr. Gordon P. Kelly and R. Wright Armstrong, Sr., disinterested witnesses. The only ones testifying for the Appellees were the Appellees themselves, both interested parties. Not only was the Appellant unable to earn a livelihood, he did provide support to his child when the child visited in Fort Worth each summer and winter. Such contributions are deemed support within the meaning of Article 46a. *Patella v. Jones*, 303 S.W. 2d 490 (Civ. App. 1957, dismissed). As specifically found by the 96th District Court of Tarrant County, Texas, the Appellant, immediately after his divorce, became physically and mentally ill, which rendered him involuntarily incapable of earning sufficient income to pay the ordered child support. The 96th District Court also specifically found that the Appellant had, at all times since November, 1959, contributed to the support of his child commensurate with his ability (See Exhibit "A").

Aside from the undisputed and disinterested evidence that the Appellant did contribute to the support of his child

commensurate with his ability, the Appellees swore to the contrary in their petition for adoption even though both testified they did not know what his income was. At no time after the marriage of the Appellees did they seek any support. In fact, the undisputed evidence shows they hoped he would not support so they could seek the adoption without notice to him or consent by him. After having silently and consentually acquiesced in the alleged non-support and after having obtained a favorable judgment in the trial court allowing the adoption and after the matter was on appeal, they then, for the first time, took strong and aggressive steps to collect the same non-support they used to gain the non-consent adoption.

The steps taken by the Appellees, as shown by Exhibit "A" resulted in the full payment of all support payments. Although the appellant was forced to borrow the funds, such funds have been paid to the Appellees through the child support office in Tarrant County and there is presently nothing owing. The effect of Appellees actions has been, as a matter of law, to abandon their allegation of non-support. Since the support has been fully paid at a time whem the adoption is not yet final, it abolishes any legal contention that there was non-support. Since there has been no non-support within the meaning of Article 46a, the Appellees grounds for a non-consent adoption no longer exist which renders the Appellee's position in this appeal moot.

Inasmuch as the Appellees no longer have any basis for a non-consent adoption the allegations of the Appellees are moot and the adoption should be abated. In any event

these matters should be returned to the trial court for further hearing as to the effect of Appellees actions and the payment of the funds by the Appellant and for conclusions of law and findings of fact in regard thereto.

Respectfully Submitted

MORGAN & BOLING

By: /s/ W. BARTON BOLING

W. Barton Boling
Attorney for Appellant

APPENDIX H

IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS
120TH JUDICIAL DISTRICT

IN THE MATTER OF THE
ADOPTION OF
MOLLY PAGE ARMSTRONG, A MINOR

No. 102485

Findings of
Fact

In response to the request of the Respondent, R. Wright Armstrong, Jr., of July 10, 1962, in the above entitled and numbered cause, I make and file the following, as my findings of fact and conclusions of law therein:

FINDINGS OF FACT

I.

On March 12, 1962, Salvatore E. Manzo, joined by his wife, Alice Davis Manzo, residents of El Paso County, Texas, as petitioner, filed their petition for leave to adopt Molly Page Armstrong, a female minor, born June 24, 1957, in Fort Worth, Tarrant County, Texas. Said minor being a resident of El Paso County, Texas.

2.

The minor, Molly Page Armstrong, is the natural daughter of Alice Davis Manzo, one of the petitioners, and of the respondent, R. Wright Armstrong, Jr., of Tarrant County, Texas.

3.

That on March 12, 1962, the Clerk of the District Court of El Paso County, Texas, mailed a certified copy of the petition to the Executive Director of the State Department of Public Welfare at Austin, Texas, and noted the same upon the docket of this court.

4.

The petition sets forth the statutory requirements of Article 46a of the Revised Civil Statutes of Texas, as follows:

a. Petitioner Salvatore E. Manzo is forty-four years of age and his wife, Alice Davis Manzo, is thirty-three years of age.

b. Petitioner resided, at the time of the filing of the petition, in El Paso County, Texas, at 7401 Arnold Drive.

c. The name to be given the child, through adoption, as set forth in the petition, is Molly Page Manzo.

d. The minor, Molly Page Armstrong is female, of the white race, born June 24, 1957, in Fort Worth, Tarrant County, Texas.

e. The minor, Molly Page Armstrong, was placed in the home of the peitioner, Salvatore E. Manzo, since his marriage to Alice Davis Manzo, on March 11, 1960.

f. Alice Davis Manzo, the natural mother of the child gave her written consent to the adoption by joining in with the petitioner, Salvatore E. Manzo, and also by giv-

ing her written consent specifically in said petition. The natural father, R. Wright Armstrong, Jr's, consent in writing was not obtained and the petition alleges that the same was not necessary as R. Wright Armstrong, Jr., had not contributed to the support of the minor, Molly Page Armstrong, commensurate with his ability to do so, for a period in excess of two years, and that the written consent of a Judge of the Juvenile Court of El Paso County, Texas, to-wit, Judge D. E. Mulcahy, Judge of the 41st District Court, consented in writing to said adoption under the provisions of Section 6 of Article 46a of the Revised Civil Statutes of Texas.

g. That the petitioner Salvatore E. Manzo bears no blood relationship to said child, but the petitioner Alice Davis Manzo, is the natural mother of said child.

h. No waiver of the six months residence in the home of the petitioner was requested in said petition.

5.

That on March 12, 1962, the petition being brought to the attention of the court, the court appointed Grace O'Brennan, a suitable person to cause an investigation to be made of the former environment and antecedents of child, for the purpose of ascertaining whether the child was a proper subject for adoption, and of the home of the petitioner, to determine whether it was a suitable home for said child, and ordered that the results of such investigation be filed within forty days from March 12, 1962, and on said date also set the case for hearing before the court for the 27th day of

April, 1962, at 9 A. M., which was a time not less than forty days after the mailing by the clerk of the certified copy of the petition to the Executive Director of the State Department of Public Welfare, and a time not exceeding sixty days after such mailing.

6.

The Court did not request, nor does the report of the investigator show that the investigator requested, any of the information set forth in Section 1c of Article 46a.

7.

That March 12, 1962, the natural mother of said minor, Alice Davis Manzo, filed an affidavit in this cause stating under oath that the father of the minor, Molly Page Armstrong R. Wright Armstrong, Jr., had failed to contribute to the support of said minor child for a period in excess of two years preceding that date, and on said date, the same was presented to the Honorable D. F. Mulcahy, a Judge of the Juvenile Court of El Paso County, Texas, and Judge of the 41st District Court, having had the same before him, found that he had failed to contribute to the support of said minor child during a period in excess of two years, and gave his consent to the adoption in writing, in compliance with Section 6 of Article 46a of the Revised Civil Statutes of Texas.

8.

That on March 21, 1962, Grace O'Brennan, the investigator appointed by the court, filed a written report of her investigation in said cause, relating to the former environ-

ments and antecedents of the child, and of the home of the petitioner, recommending the adoption.

9.

That on April 27, 1962, the matter came on to be heard before the court, and the court having heard evidence from the petitioner, Salvatore E. Manzo and Alice Davis Manzo and said child, Molly Page Armstrong being present, talked to said child, and after due consideration of the petition, the investigator's report, and the evidence, held that such minor was a proper subject for adoption, and that the home of the petitioner was a suitable home for said child, and that it would be for the best interest of said child, that her name be changed to Molly Page Manzo, and granted said petition for leave to adopt the minor child, by the said Salvatore E. Manzo, and changing the minor's name, to Molly Page Manzo.

10.

That thereafter, on May 7, 1962, respondent, R. Wright Armstrong, Jr., the natural father of the minor, Molly Page Manzo, filed a motion for new trial in this cause, said respondent not having had notice of the hearing of the adoption proceedings until after the entry of said judgment of April 27, 1962. That thereafter said motion was amended as an amended motion for new trial and motion to vacate said judgment, and filed on May 25, 1962. That thereafter, on June 22, 1962, said amended motion came on to be heard, and same was overruled and denied by the court and order on same was rendered and entered on June 29, 1962.

11.

Evidence was heard upon the motion for new trial, and the court found:

That Alice Davis Manzo secured a divorce from R. Wright Armstrong, Jr. on November 6, 1959, in cause No. 16544F in the 96th District Court of Tarrant County, Texas, wherein the custody of Molly Page Armstrong was granted to the plaintiff, Alice Davis Manzo, referred to in said divorce decree as, F. D. Armstrong, with R. Wright Armstrong, Jr. to have the privilege of visiting said child at reasonable places, times and intervals. That the defendant, R. Wright Armstrong, Jr., in said divorce decree was ordered to pay unto Walter Echols, Child Support Officer of Tarrant County, Texas, and his successors in office, the sum of $50.00 per month, beginning November 19, 1959, and continuing thereafter on the 16th day of each succeeding month until the further order of the court, or until the child shall reach eighteen years of age.

That after said divorce decree, the said R. Wright Armstrong, Jr. paid the sum of $50.00 during the month of November 1959, and during 1960, paid the sum of $150.00 during February of said year, and made no other payments.

That the said R. Wright Armstrong did not give his written consent to the adoption of the minor, Molly Page Armstrong, Jr., by the said petitioner, Salvatore E. Manzo.

That the said R. Wright Armstrong, Jr., while ill for a time after the entry of the divorce decree of November 6, 1959, was able to work shortly thereafter. That the said R.

Wright Armstrong, Jr. was a duly licensed and practicing attorney in the courts of the State of Texas, particularly in Tarrant County, and he was able to do appellate work for another attorney with whom he officed. Further, that he was physically able to teach church school for three years, and sing in the choir during said three year period immediately preceding the hearing on the motion for new trial. That while he did not make any considerable money during said period, he did not contribute to the support of said minor child in compliance with the order of the District Court of Tarrant County, and that during the second week of February, 1962, he was employed, and has been employed, as Corporation Court Judge of the City of Fort Worth full time, although previously he had acted as substitute Judge during 1961, during the absence and illness of other judges of said Corporation Court, and indicated he had filed an income tax return for the year, and paid a taxable income on approximately an income of $900.00. During the year 1960 he was also employed for a short period of time as a corporation prosecutor by the City of Fort Worth. That his salary since February of 1962, as Judge of the Corporation Court of Tarrant County, is slightly in excess of five hundred dollars per month.

That during the period since the divorce he has paid off approximately four thousand dollars worth of indebtedness which he owed. That he had no living expenses as he was living with his mother and father who paid his medical bills, hospital bills, food and even purchased clothing for him. That upon becoming Judge of the Corporation Court he

purchased clothing from several haberdashers, and a new air conditioned Pontiac Catalina on time payments.

CONCLUSIONS OF LAW

1.

That all requirements as set forth in Article 46a have been met by the petitioner Salvatore E. Manzo and wife, Alice Davis Manzo, for the adoption. That the respondent, R. Wright Armstrong, Jr. did not contribute substantially to the support of said minor child, Molly Page Manzo, during such period of two years, commensurate with his financial ability, and it was not necessary to obtain a written consent to the adoption, and the written consent of the Honorable D. E. Mulcahy, Judge of the Juvenile Court of El Paso County, Texas, the Judge of the 41st District Court in the County of the child's residence was obtained in writing, and filed in said proceedings.

2.

That all requirements and conditions of Article 46a having been met, the court concludes that it is the best interest of the minor child, Molly Page Armstrong, to be adopted by the petitioner, Salvatore E. Manzo, and her name changed to Molly Page Manzo.

/s/ HANS E. BROCKMOLLER

Judge

ENDORSED: No. 102,485 Filed July 16, A.D. 1962, at 10:35 o'clock A. M. J. W. A. JOHNSON, Clerk, District Courts, El Paso County, Texas, By (Sgd) Earl N. Forsyth, Deputy

APPENDIX J

IN THE DISTRICT COURT
OF EL PASO COUNTY, TEXAS

ONE HUNDRED TWENTIETH JUDICIAL DISTRICT

IN THE MATTER OF THE ADOPTION OF MOLLY PAGE ARMSTRONG, A Minor.

No. 102,485

Objections to Court's Findings of Fact etc.

OBJECTION TO THE COURT'S FINDINGS OF FACTS AND CONCLUSIONS OF LAW AND RESPONDENT'S REQUEST FOR ADDITIONAL AND AMENDED FINDINGS OF FACTS AND CONCLUSIONS OF LAW

COMES NOW, R. WRIGHT ARMSTRONG, JR., Respondent in the above cause and hereby objects and excepts to the court's findings of facts and conclusions of law submitted by the court to the undersigned attorney on the 12th day of July, 1962, and would show as follows:

I.

That Respondent does not object to paragraphs 1 through 6 paragraphs 8 and 9 of the court's findings of facts. That Respondent does object and except to paragraph 7 of the court's findings of facts wherein the court in its final re-

mark states the conclusion "incompliance with Section 6 of Article 46a of the Revised Civil Statutes of Texas", because the same is a conclusion of law and not fact and for the reason it is an incorrect statement of the law under the evidence and asks that that portion of paragraph 7 be stricken from the court's findings of facts.

II.

That Respondent objects and excepts to the findings of facts of the court as contained in paragraphs 10 and 11 for the reason that they are incomplete, misleading and do not adequately represent the controlling facts as established by the evidence and for that reason asks that paragraphs 10 and 11 of the court's findings of facts be stricken and the requested findings of fact attached hereto be found as facts by the court instead, or alternatively the attached findings be found by the court as additional findings of fact.

III.

That Respondent objects and excepts to all of the court's conclusions of law and ask that they be stricken for the reason they are incorrect conclusion under the evidence and that they are insufficient conclusions under the evidence.

WHEREFORE, PREMISES CONSIDERED, Respondent requests that the conclusions of law as found by the court be stricken and the requested conclusions of law requested by Respondent be found by the court, and that the requested findings of facts of Respondent be found by

the court in lieu of paragraph 10 and 11 of the court findings of facts, and that paragraph 7 of the court's findings of facts be amended as requested.

Respectfully Submitted
MORGAN and BOLING

By: /s/ W. BARTON BOLING

W. Barton Boling
Attorney for Respondent

IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS
ONE HUNDRED TWENTIETH JUDICIAL DISTRICT

IN THE MATTER OF THE ADOPTION OF MOLLY PAGE ARMSTRONG, A Minor.

No. 102,485

REQUESTED FINDINGS OF FACTS AND CONCLUSIONS OF LAW

Respondent in the above case requests the court to find the following findings of fact and conclusions of law.

1. That the address and whereabouts of the said R. WRIGHT ARMSTRONG, JR. were at all times well known to the Petitioners during the period from March 12, 1960, through May, 1962.

2. That after the Petitioners married on March 11, 1960, neither MRS. ALICE DAVIS MANZO nor MR. SALVATORE E. MANZO ever made any request or demand of R. WRIGHT ARMSTRONG, JR. that he pay any child support or that he contribute to the support of MOLLY PAGE ARMSTRONG.

3. That at no time after her divorce from R. WRIGHT ARMSTRONG, JR. did MRS. ALICE DAVIS MANZO ever communicate with or personally request or demand of R. WRIGHT ARMSTRONG, JR. that he pay any child support or that he contribute to the support of MOLLY PAGE ARMSTRONG.

4. That the reason that MRS. ALICE DAVIS MANZO and SALVATORE E. MANZO did not, after their marriage, make any efforts or make any requests or demands of R. WRIGHT ARMSTRONG, JR. to pay the child support or to contribute to the support of MOLLY PAGE ARMSTRONG was in part their desire that the adoption go through without the necessity of obtaining the written consent of R. WRIGHT ARMSTRONG, JR. to the adoption.

5. That the income and financial ability of ALICE DAVIS MANZO and SALVATORE E. MANZO was, at all times during their marriage, sufficient to provide necessary support to MOLLY PAGE ARMSTRONG, and that during that period any support payments directed to them would have been put in an account for MOLLY PAGE ARMSTRONG education.

6. That neither ALICE DAVIS MANZO nor SALVATORE E. MANZO ever investigated the financial ability of R. WRIGHT ARMSTRONG, JR. nor did they ever investigate or know what the income of R. WRIGHT ARMSTRONG, JR. was.

7. That on or about one month after the divorce of ALICE DAVIS MANZO from R. WRIGHT ARMSTRONG, JR. on November 6, 1959, the said R. WRIGHT ARMSTRONG, JR., because he was so emotionally disturbed and could not continue to fullfill his duties, was asked to resign and was taken off the payroll of the Trinity Cement Company where he had been employed for several years.

8. That on or about December 22, 1959, the said R. WRIGHT ARMSTRONG, JR. received emergency hospitalization after having had a convulsion described as a grand mal seizure and that his hospitalization continued for approximately two or three weeks when he was released to return to his parents home for convalescence.

9. That upon his hospitalization, R. WRIGHT ARMSTRONG, JR. went under the care of Dr. Gordon B. Kelly and that following numerous tests and observations by other doctors, it was concluded that the primary cause of the hospitalization was emotional disturbance symbolized by heavy drinking and Mr. Armstrong was referred to Dr. Holmgren, a psychiatrist, for treatment.

10. That R. WRIGHT ARMSTRONG, JR.'s emotional disturbance was as incapacitating as organic diseases and that R. WRIGHT ARMSTRONG, JR.'s emotional condition made him unable to carry on in his normal fashion and that generally his condition would make him hazy and not too well adjusted and unable to hold down gainful employment for a period of at least six months and probably for a period of one year after his hospitalization, because it would be a difficult transitional period.

11. That subsequent to his release from the hospital, R. WRIGHT ARMSTRONG, JR. obtained employment with the City of Fort Worth as an assistant city attorney assigned to prosecute traffice cases in the corporation courts. That from the time he was asked to resign from the Trinity Cement Company until he obtained this employ-

ment with the City of Fort Worth in February, 1960, R. WRIGHT ARMSTRONG, JR. was unemployed and was receiving no income.

12. That R. WRIGHT ARMSTRONG, JR. remained in the employ of the City of Fort Worth approximately three to four months and his take home pay was approximately $150.00 to $160.00 every two weeks. That R. WRIGHT ARMSTRONG, JR. was unable to concentrate long enough to try the traffic cases or remember enough facts to carry on his duties and that the City Attorney of Fort Worth called R. WRIGHT ARMSTRONG, JR. in and asked R. WRIGHT ARMSTRONG, JR. to resign and to straighten out his emotional problem.

13. That from the income received from his employment as assistant city attorney of Fort Worth during that three to four month period, R. WRIGHT ARMSTRONG, JR. paid out of that the sums of $150.00 to the child support office in Fort Worth, Texas, for MOLLY PAGE ARMSTRONG, $232.00 for back house payments and $78.00 for insurance necessary to close out the sale of the house owned by R. WRIGHT ARMSTRONG, JR. and ALICE DAVIS MANZO. That the balance of income received as assistant city attorney was used by R. WRIGHT ARMSTRONG, JR. to pay on the community debts of R. WRIGHT ARMSTRONG, JR. and ALICE DAVIS MANZO incurred by them prior to their divorce.

14. That following his loss of his job as assistant city attorney, R. WRIGHT ARMSTRONG, JR. was unemployed and went under the care of Dr. Arch McNeill of Dallas.

That Dr. McNeill advised R. WRIGHT ARMSTRONG, JR. to go to work in a field enjoyed whereby he could regain his strength, both physically and mentally, through the therapy of engaging in activities he enjoyed. Particularly Dr. McNeill urged R. WRIGHT ARMSTRONG, JR. to go back to the practice of law. That R. WRIGHT ARMSTRONG, JR. was under the care of Dr. McNeill from the summer of 1960 for about seven or eight months.

15. Pursuant to the suggestion and advise of Dr. McNeill, R. WRIGHT ARMSTRONG, JR. entered an arrangement with Elmo Irby, attorney in Fort Worth, to come into his office on a non-salary basis to start his own law practice. R. WRIGHT ARMSTRONG, JR. has use of the office and facilities of Mr. Irby without charge in exchange for R. WRIGHT ARMSTRONG, JR. assisting Mr. Irby in running errands, getting judgments signed, briefing and similar matters. That this arrangement continued from about July 15, 1960, until about February, 1962.

16. That during the period of about July 15, 1960, until the end of 1960, R. WRIGHT ARMSTRONG, JR. made no money from his own practice but did receive the following amounts from Mr. Irby for work done for him: December 12, 1960—$37.50; December 28, 1960—$47.42; December 31, 1960—$75.00. That those sums were the only income received by R. WRIGHT ARMSTRONG, JR. during the period July 15, 1960 to the end of 1960.

17. That during the first part of the period R. WRIGHT ARMSTRONG, JR. was with Mr. Irby during 1960, his emotional condition was such that he was unable to carry

on regular office hours and his mental state was fuzzy and had difficulty grasping what was going on. That on several occasions R. WRIGHT ARMSTRONG, JR. while performing errands for Mr. Irby would return having forgotten to accomplish the errand, but that R. WRIGHT ARMSTRONG, JR. became more interested in the practice of the law and his mental condition began to improve as the months went on.

18. That during the year 1961, while still with Mr. Irby under the same office arrangement, Mr. Irby paid to R. WRIGHT ARMSTRONG, JR. the following sums: June 27, 1961—$142.10; July 1961—$75.00. That in addition to those sums, R. WRIGHT ARMSTRONG, JR. received during the year 1961 from his own private practice approximately the sum of $200.00 which was received in sporadic periods throughout the year and being comprised primarily of fees involving $10.00 to $15.00. That during the latter part of 1961 and the beginning of 1962, R. WRIGHT ARMSTRONG, JR. did act from time to time as substitute corporation judge at various intervals and was paid on a basis of $40.00 per day for which he received from such substitute services approximately the total sum of $600.00. That out of such incomes he paid about $75.00 for clothing for MOLLY PAGE ARMSTRONG which he gave her while she was visiting in the summer of 1961, and during MOLLY PAGE ARMSTRONG's visit to Fort Worth over the Christmas holidays he purchased her about $50.00 in clothing and gave to her. That the bulk of the balance of such income was used by R. WRIGHT ARMSTRONG, JR. to pay on

the community debts incurred by R. WRIGHT ARMSTRONG, JR. and ALICE DAVIS MANZO prior to their divorce.

19. That in about November, 1961, the City Attorney of Fort Worth asked R. WRIGHT ARMSTRONG, JR. to keep himself available because one of the corporation court judges was to retire and he wanted R. WRIGHT ARMSTRONG, JR. to seek the position. Subsequently, after a unanimous recommendation by the Bar Association in Tarrant County, Texas, the Fort Worth City Counsel appointed R. WRIGHT ARMSTRONG, JR. as corporation court Judge, a position he began about the second week in February, 1962, and a position he now holds.

20. That as corporation court Judge; R. WRIGHT ARMSTRONG, JR. earns $239.44 every two weeks take home pay. That at the time of taking that position, R. WRIGHT ARMSTRONG, JR. still owed approximately $400.00 or $500.00 to the Union Bank in Fort Worth representing the balance due on a community note and debt incurred by R. WRIGHT ARMSTRONG, JR. and ALICE DAVIS MANZO prior to their divorce. That as one of the conditions of being given the position of corporation court Judge was that he would clear up all debts so the city would not be embarrassed by any long overdue obligations and that his first money from that position would be used to clear up all such debts. That R. WRIGHT ARMSTRONG, JR. did upon receiving his first two checks as corporation court Judge pay off the balance due on the said note at the

Union Bank of Fort Worth in the approximate amount of $400.00 to $500.00.

21. That R. WRIGHT ARMSTRONG, JR., subsequent to his divorce from ALICE DAVIS MANZO, incurred no debts of his own.

22. That out of his next money as Judge, after payment of the balance of said bank note, R. WRIGHT ARMSTRONG, JR. purchased himself articles of clothing necessary to his position as a Judge of a Corporation Court.

23. That the divorce decree between R. WRIGHT ARMSTRONG, JR. and ALICE DAVIS MANZO contained no order concerning the approximately $4,000.00 in community debts incurred by R. WRIGHT ARMSTRONG, JR. and ALICE DAVIS MANZO during their marriage. That the balance on one community note and debt at the Fort Worth National Bank in the amount of about $1,500.00 was paid by R. WRIGHT ARMSTRONG, JR.'s father who was a co-signer on the note, after R. WRIGHT ARMSTRONG, JR. and ALICE DAVIS MANZO were divorced.

24. That although R. WRIGHT ARMSTRONG, JR. and ALICE DAVIS MANZO owned community real property and community personal property at the time of their divorce, the court in the divorce decree made no specific disposition of such community property other than to state "That the community and spearate property of the parties be distributed by agreement of the parties". That the court in its decree made no mention of any specific property settlement agreement nor did the court in its decree approve

any such property settlement agreement. That the property settlement agreement introduced in this cause as Exhibit P-10 apparently is the original of a property settlement agreement, but it contains no file markings indicating it was ever filed in the divorce papers of the 96th Judicial District which granted such divorce. Nor does it appear that said court ever say such property settlement agreement.

25. That R. WRIGHT ARMSTRONG, JR. and ALICE DAVIS MANZO owned property at 6853 Middle Road, Fort Worth, Texas, at the time of their divorce. That the house was subsequently sold in February, 1960, for approximately $1,000.00 cash. That at the time of the sale, R. WRIGHT ARMSTRONG, JR. believed that the funds of the sale were to be split 50-50 between himself and ALICE DAVIS MANZO. That Mr. Elmo Irby who had taken part in the property settlement negotiations recalled that such funds were to be split 50-50. That Fred Cruseman, attorney handling the closing of the house sale thought the funds were to be split 50-50. That upon receipt of the approximately $1,000.00 cash from the sale of the house Fred Cruseman was going to split the funds 50-50 until R. WRIGHT ARMSTRONG, JR. requested that he be given only about $150.00 of the money and that the balance of his half along with her half be sent to her to help with the child and the amount of approximately $850.00 was sent to ALICE DAVIS MANZO. That R. WRIGHT ARMSTRONG, JR. requested that the bulk of his one-half be sent to her because he was concerned at that time about his lack of in-

come and intended it as a contribution to the support of MOLLY PAGE ARMSTRONG.

26. That the child, MOLLY PAGE ARMSTRONG, was allowed to visit in the home of R. WRIGHT ARMSTRONG, JR.'s parents where he was living for approximately two weeks during the summer of 1960 and 1961, and over the Christmas holidays of 1960, 1961 and 1962.

27. That prior to the child's first visit in the summer of 1960, ALICE DAVIS MANZO wrote to R. W. ARMSTRONG, SR., advising him that MOLLY PAGE ARMSTRONG could start to visit if they would assure her that the child would be picked up and returned and assure her that they would be in Fort Worth during the child's visit as MRS. MANZO had received unsolicited reports that R. W. ARMSTRONG, JR. was not quite himself. Those assurances were given by R. W. ARMSTRONG, SR.

28. That during the latter part of 1961, R. WRIGHT ARMSTRONG, JR. substantially regained his stability and substantially regained his emotional stability. That R. WRIGHT ARMSTRONG, JR. completely ceased drinking during the first part of the summer of 1960, and at present has fully recovered.

29. That the automobile purchased by R. WRIGHT ARMSTRONG, JR. was purchased with no down payment and no trade in in the latter part of March, 1962, and the first payment on said automobile was made by R. WRIGHT ARMSTRONG, JR. in the latter part of May, 1962. That such automobile was the first one ever owned by him.

30. That R. WRIGHT ARMSTRONG, JR. never consented to the adoption of MOLLY PAGE ARMSTRONG, and was never asked to consent to such adoption. That R. WRIGHT ARMSTRONG, JR. was never notified of the adoption proceedings and had no knowledge of the adoption proceedings until after the entry of the said adoption judgment of April 27, 1962.

31. That on May 7, 1962, R. WRIGHT ARMSTRONG, JR. filed a motion for new trial in this cause. That thereafter on June 25, 1962, said motion was amended as an amended motion for new trial and motion to vacate said judgment. That said amended motion came on to be heard on June 22, 1962, and same was overruled and denied by the court and an order on same was rendered and entered on June 29, 1962.

32. That throughout the period 1960, 1961, substantial pressure was brought to bear on R. WRIGHT ARMSTRONG, JR. to pay the community debts that had been incurred by R. WRIGHT ARMSTRONG, JR. and ALICE DAVIS MANZO prior to their divorce. That such creditors not only constantly called R. WRIGHT ARMSTRONG, JR. but also constantly called his mother and father and in fact on one occasion threatened to attempt to get R. WRIGHT ARMSTRONG, JR. disbarred because of such debts.

33. That R. WRIGHT ARMSTRONG, JR. has always had a great love and affection for MOLLY PAGE ARMSTRONG, his only child, and that MOLLY PAGE ARMSTRONG has always demonstrated her love and affection to R. WRIGHT ARMSTRONG, JR., her natural father.

REQUESTED CONCLUSIONS OF LAW

1. That a finding or determination by the Juvenile Judge that the living natural father has failed to contribute to the support of the minor child sought to be adopted for a period of two years is insufficient under Article 46a to authorize the adoption of the minor child on the written consent of the Juvenile Judge without the written consent of the natural father, unless the Juvenile Judge also specifically finds or determines that the natural father shall have not contributed substantially to the support of such child during such two year period commensurate with his financial ability.

2. That even if the Juvenile Judge gives his written consent to the adoption of such minor child, it is still necessary to notify the natural father of the adoption proceedings where the whereabouts of the natural father is known.

3. That under Article 46a the use of the failure of the natural father to substantially contribute to the support of his child commensurate with his financial ability for a period of two years does not include a failure to support which is done through force of circumstances or necessity but issued in a sense of a willful failure such as would imply a conscious disregard to the child in respect of the parental obligation of support.

4. That after the divorce of R. WRIGHT ARMSTRONG, JR. and ALICE DAVIS MANZO, their community property, including community real property, was owned jointly by them as tenants in common since the court in its decree of divorce failed to either specifically dispose of

such community property or to specifically divide such community property between them.

5. That it was necessary to obtain the written consent of R. WRIGHT ARMSTRONG, JR. to the adoption unless he shall have not contributed substantially to the support of MOLLY PAGE ARMSTRONG during a period of two years commensurate with his financial ability.

6. That under the evidence, R. WRIGHT ARMSTRONG, JR. did not fail to substantially contribute to the support of MOLLY PAGE ARMSTRONG during the two year period commensurate with his financial ability as required by Article 46a before MOLLY PAGE ARMSTRONG could be adopted without his written consent.

7. That the right and power of adoption is strictly statutory and unless Article 46a is strictly complied with, no adoption can be permitted.

8. That Petitioners had the burden of proof in this matter.

Respectfully Requested
MORGAN and BOLING
By: /s/ W. BARTON BOLING

W. Barton Boling
Attorney for Respondent

ENDORSED: No. 102,485 Filed July 16 A.D. 1962 at 10:40 o'clock A.M. J. W. A. JOHNSON, Clerk, District Courts, El Paso County, Texas, By (Sgd) Earl N. Forsyth, Deputy

APPENDIX K

IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS

ONE HUNDRED TWENTIETH JUDICIAL DISTRICT

Order overruling
Objection to Court's
Findings of Fact etc.
Volume 7
Page 141

IN THE MATTER OF THE ADOPTION OF
MOLLY PAGE ARMSTRONG, A Minor

NO. 102,485

ORDER

On this, the 16th day of July, 1962, came on to be considered by the Court the objections and exceptions and requests for additional and amended findings of facts and conclusions of law of R. WRIGHT ARMSTRONG, JR., Respondent in the above entitled and numbered cause, and the Court having considered the same and being of the opinion that such objections and exceptions and requests should be in all things overruled and denied;

It is hereby ORDERED and DECREED by the Court that the objections and exceptions to the Court's findings of facts and conclusions of law, on file in the above cause, be in all things overruled; and it is further ORDERED and DECREED by the Court that all of Respondent's requests

for additional and amended findings of fact and conclusions of law are hereby in all things denied. To all of which Respondent excepted and gave notice of appeal to the Court of Civil Appeals of El Paso.

SIGNED AND ENTERED this 16th day of July, 1962.

/s/ HANS E. BRODSMOLLER

JUDGE

APPENDIX L

Excerpts from Record of Petitioner's Pleadings indicating proper and timely Raising of Federal Question

EXCERPT FROM PETITIONER'S MOTION FOR NEW TRIAL

Filed May 7, 1962, in
120th District Court of
El Paso County, Texas

The petitioner herein did not have notice, actual or constructive, of the filing of this suit, or of the judgment entered herein until after the rendition of the judgment.

Petitioner herein did not at any time give his consent for his minor child, Molly Page Armstrong, to be adopted by any person, including the petitioners in this case.

Petitioner, the natural father of Molly Page Armstrong, has not voluntarily abandoned or deserted said child at any time, and has not failed to contribute substantially to the support of such child during a two year period commensurate with his financial ability.

EXCERPT FROM PETITIONER'S AMENDED MOTION FOR NEW TRIAL AND MOTION TO VACATE JUDGMENT

Filed May 25, 1962, in the
120th District Court of
El Paso County, Texas

At the time the above entitled and numbered proceeding came on to be heard and judgment rendered, your Petitioner had never been advised or given notice, actual or constructive, as required by the laws of Texas, that this proceeding was to be heard or that it was even pending or of the judgment herein until after the rendition of the judgment, nor was any attempt made to notify Petitioner in any way of this proceeding although his address and whereabouts were well known to the parties, in fact the parties to this proceeding deliberately and wrongfully withheld all notice from Petitioner for the expressed purpose of denying him any opportunity to appear, contest and present his defenses to this proceeding; and that Petitioner was prevented from appearing and presenting his defenses not by his own fault or negligence but rather by the deliberate and wrongful acts of the parties to this proceeding.

The parental rights of Petitioner as the natural father of said child have never been taken from Petitioner nor has he waived them.

Petitioner has never at anytime voluntarily abandoned or deserted said child, but on the contrary, since his di. rce from the child's natural mother, had said child in his possession and care for substantial periods each summer and each Christmas during the years 1960 and 1961.

Petitioner has not failed to contribute substantially to the support of said child during a two year period commensurate with his financial ability, as was represented to the Court by the parties to this proceeding, but rather has, since his divorce from the child's natural mother, contin-

ually contributed substantially to the support of said child commensurate with his financial ability, a fact that was and is well known to the natural mother of said child.

No one, including the parties to this proceeding, has ever sought Petitioner's consent for his child, MOLLY PAGE ARMSTRONG, to be adopted by anyone, and Petitioner has never at any time given his consent for his said child to be adopted by any person, including the parties to this proceeding, such consent being necessary under the laws of Texas before said child could be properly and legally adopted by anyone, including the parties to this proceeding.

EXCERPT FROM APPELLANT'S BRIEF

Filed in the Court of Civil Appeals
at El Paso on September 14, 1962

APPELLANT'S POINT NO. 3

The trial court erred in not rendering judgment for the Appellant setting aside the adoption, because Article 46a on which the adoption is founded, or in any event, Section 6 of Article 46a on which the adoption is founded, is unconstitutional in that it permitted the adoption without notice to or consent of the Appellant and thereby deprived the Appellant of his child without due process of law.

APPELLANT'S POINT NO. 4

The trial court erred in not rendering judgment for the Appellant setting aside the adoption, because the undisputed evidence shows that the adoption judgment was obtained without any notice to the Appellant.

EXCERPT FROM APPELLANT'S MOTION FOR REHEARING

Filed in the Court of Civil Appeals
at El Paso on September 24, 1963.

The Court of Civil Appeals erred in not sustaining Appellant's third point of appeal as follows:

"The trial court erred in not rendering judgment for the Appellant setting aside the adoption, because Article 46a on which the adoption is founded, or in any event, Section 6 of Article 46a on which the adoption is founded, is unconstitutional in that it permitted the adoption without notice to or consent of the Appellant and thereby deprived the Appellant of his child without due process of law."

The Court of Civil Appeals erred in not sustaining Appellant's fourth point of appeal as follows:

"The trial court erred in not rendering judgment for the Appellant setting aside the adoption, because the undisputed evidence shows that the adoption judgment was obtained without any notice to the appellant."

EXCERPT FROM APPLICATION FOR WRIT OF ERROR

In the Texas Supreme Court
filed by Petitioner on
November 18, 1963

The Court of Civil Appeals erred in not sustaining Appellant's third point of appeal as follows:

"The trial court erred in not rendering judgment for the Appellant setting aside the adoption, because Article 46a on

which the adoption is founded, or in any event, Section 6 of Article 46a on which the adoption is founded, is unconstitutional in that it permitted the adoption without notice to or consent of the Appellant and thereby deprived the Appellant of his child without due process of law." Third ground, motion for rehearing.

The Court of Civil Appeals erred in not sustaining Appellant's fourth point of appeal as follows:

"The trial court erred in not rendering judgment for the Appellant setting aside the adoption, because the undisputed evidence shows that the adoption judgment was obtained without any notice to the appellant. "Fourth ground, motion for rehearing.

EXCERPT FROM PETITIONER'S MOTION FOR REHEARING

In the Texas Supreme Court
Filed January 29, 1964

III.

THIS MOTION FOR REHEARING SHOULD BE GRANTED BECAUSE SECTION 6, ARTICLE 46a IS UNCONSTITUTIONAL OR IN ANY EVENT THE TRIAL COURT APPLIED ARTICLE 46a AND CONDUCTED THE PROCEEDINGS IN AN UNCONSTITUTIONAL MANNER.

IV.

THIS MOTION FOR REHEARING SHOULD BE GRANTED BECAUSE PETITIONER HAD NO NOTICE OF THE INITIAL ADOPTION HEARING.

APPENDIX M

14TH AMENDMENT—U. S. CONSTITUTION

AMENDMENT XIV.—CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

ARTICLE 46a

Sections 6 and 7

Vernon's Revised Civil Statutes

Consent of parents and child; exceptions

Sec. 6. Except as otherwise provided in this Section, no adoption shall be permitted except with the written consent of the living parents of the child; provided, however, that if a living parent or parents shall voluntarily abandon and desert a child sought to be adopted, for a period of two (2) years, and shall have left such child to the care, custody, control and management of other persons, or if such parent or parents shall have not contributed substantially to the

support of such child during such period of two (2) years commensurate with his financial ability, then, in either event, it shall not be necessary to obtain the written consent of the living parent or parents in such default, and in such cases adoption shall be permitted on the written consent of the Judge of the Juvenile Court of the county of such child's residence; or if there be no Juvenile Court, then on the written consent of the Judge of the County Court of the county of such child's residence.

In a case of a child fourteen (14) years of age or over, the consent of such child also shall be required and must be given in writing in the presence of the court.

Consent shall not be required of parents whose parental rights have been terminated by order of the Juvenile Court or other Court of competent jurisdiction.

In case of a child not born in lawful wedlock the consent of the father shall not be necessary, and the consent of the natural mother, regardless of her age, shall suffice.

In the case of a child placed by its parents in a child-placing agency or institution licensed by the State Department of Public Welfare to place children for adoption, it shall be sufficient for the living parents to consent in writing that such agency or institution place such child for adoption, and no further consent shall be required of such living parent.

In the case of any consent by the natural parents as herein required to the adoption of a minor child, regardless of

whether or not said child was born in lawful wedlock, such consent shall be sufficient if given in writing after the birth of said child and duly acknowledged, giving the name, date and place of birth of said child, and shall agree to permanently surrender the care, custody, and parental authority of and over said child, and consent to its adoption upon judgment of any Court of competent jurisdiction without the necessity of reciting therein the names of the parents by adoption. As amended Acts 1937, 45th Leg., p. 1324, ch. 490, § 1; Acts 1951, 52nd Leg., p. 388, ch. 249, § 2.

Restoration of child to parents

Sec. 7. Nothing in this Act shall prevent a Court of Competent Jurisdiction from taking away from such adoptive parent the custody of the adopted child and awarding the same to its natural parents, or either of them or to any other person, upon proof of the bad moral character of such adoptive parent, or upon proof of abuse, neglect or ill treatment of such adopted child by the adoptive parent.

ARTICLE 46a

Section 6

As amended effective May 24, 1963

Art. 46a. Proceedings for adoption, hearing and rights of adopted child

Consent of parents and child; exceptions

Sec. 6. Except as otherwise provided in this Section, no adoption shall be permitted except with the written consent of the living parents of the child; provided, however, that if

a living parent or parents shall voluntarily abandon and desert a child sought to be adopted, for a period of two (2) years, and shall have left such child to the care, custody, control and management of other persons, or if such parent or parents shall have not contributed substantially to the support of such child during such period of two (2) years commensurate with his financial ability, then, in either event, it shall not be necessary to obtain the written consent of the living parent or parents in such default, and in such cases adoption shall be permitted on the written consent of the Judge of the Juvenile Court of the county of such child's residence; or if there be no Juvenile Court, then on the written consent of the Judge of the County Court of the county of such child's residence.

In a case of a child fourteen (14) years of age or over, the consent of such child also shall be required and must be given in writing in the presence of the court.

Consent shall not be required of parents whose parental rights have been terminated by order of the Juvenile Court or other court of competent jurisdiction; provided, however, that in such cases adoption shall be permitted only upon the written order of the court terminating such parental rights. Such written order of the court giving consent for the adoption of such child shall be confidential and shall be filed with and made a part of the confidential records in the adoption proceedings, and shall be open for inspection only under such conditions and through such procedures as are prescribed by law for the inspection of the confidential adoption records in the court.

In case of a child not born in lawful wedlock the consent of the father shall not be necessary, and the consent of the natural mother, regardless of her age, shall suffice.

In the case of a child placed by its parents in a child-placing agency or institution licensed by the State Department of Public Welfare to place children for adoption, it shall be sufficient for the living parents to consent in writing that such agency or institution place such child for adoption, and no further consent shall be required of such living parent.

In the case of any consent by the natural parents as herein required to the adoption of a minor child, regardless of whether or not said child was born in lawful wedlock, such consent shall be sufficient if given in writing after the birth of said child and duly acknowledged, giving the name, date and place of birth of said child, and shall agree to permanently surrender the care, custody, and parental authority of and over said child, and consent to its adoption upon judgment of any court of competent jurisdiction without the necessity of reciting therein the names of the parents by adoption. As amended Acts 1961, 57th Leg., p. 737, ch. 344, § 1; Acts 1963, 58th Leg., p. 941, ch. 370, § 1.

1N

NO. 16544-F

F. D. ARMSTRONG
VS.
R. W. ARMSTRONG, JR.

IN THE DISTRICT COURT,
TARRANT COUNTY, TEXAS,
96TH JUDICIAL DISTRICT.

JUDGMENT

On this 6th day of November, 1959, came on to be consider ed the above entitled and numbered cause, and came Plaintiff in person and by her Attorney of record and announced ready for trial, but Defendant came not, having waived service of citation, acknowledged receipt of a copy of Plaintiff's original petition, entered a general appearance, and agreed to this hearing without notice to him, and the Court having heard and considered the pleadings, the evidence, and argument of counsel, being of opinion that judgment should be entered in favor of Plaintiff, it is accordingly.

ORDERED, ADJUDGED AND DECREED that the bonds of matrimony heretofore existing between Plaintiff, F. D. Armstrong, and Defendant, R. W. Armstrong, Jr. be, and they are hereby dissolved, and Plaintiff is granted a divorce from Defendant. That the custody of Molly Page Armstrong, child of the parties, be, and it is hereby, given and granted unto Plaintiff, F. D. Armstrong, Defendant, R. W. Armstrong, Jr. to have the privilege of visiting with said child at reasonable times, places, and intervals. That the community and separate property of the parties be dis-

tributed by agreement of the parties. That Defendant be, and he is hereby, ordered to pay unto Walker Echols, Child Support Officer of Tarrant County, Texas, and his successors in office, the sum of $50.00 per month, beginning November 16, 1959, and continuing thereafter on the 16th day of each succeeding month until further order of this court, or until said child shall reach 18 years of age. That Defendant pay unto Plaintiff the sum of $100.00 as her reasonable Attorney's fee in connection with this suit; and that all costs in this behalf expended be, and they are hereby, adjudged against the Defendant, R. W. Armstrong, Jr., for which let execution issue.

SIGNED, RENDERED AND ENTERED this 6th day of November, 1959.

/s/ FISHER T. DENNY

Judge Presiding
96th District Court
Tarrant County, Texas

APPROVED AS TO FORM:
R. W. Armstrong, / Defendant

TILLEY, HYDER & LAW
By /s/ TOM H. LAW

TOM LAW
Attorneys for Defendant